

Prisoners their own wardens

J. F. A. Mcnair

1899


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Revocation how made.

6 A proposal is revoked—

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(1) by the communication of notice of revocation by the proposer to the other party;

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(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Acceptance must be absolute

7. In order to convert a proposal into a promise the acceptance must—

(1) be absolute and unqualified;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the acceptance.

8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

9. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

CHAPTER II.—OF CONTRACTS, VOIDABLE CONTRACTS, AND VOID AGREEMENTS.

10. All agreements are contracts* if they are made by the free consent of parties competent to contract, for a lawful consideration,† and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed, by which any contract is required to be made in writing‡ or in the presence of witnesses, or any law relating to the registration of documents.

11. Every person is competent to contract who is of the age of majority Who are competent to contract. according to the law to which he is subject, § and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

12. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it, and of forming his judgment as to its effect upon his interests.

* See s. 2.
† See s. 25.
‡ See s. 26.
§ See Act 1923.

1872. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

Act 9. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.*

Illustrations.

(a.) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b.) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

"Consent" defined.

13. Two or more persons are said to consent when they agree upon the same thing in the same sense.

"Free consent" defined.

14. Consent is said to be free when it is not caused by—

- (1) coercion, as defined in section fifteen, or
- (2) undue influence, as defined in section sixteen, or
- (3) fraud, as defined in section seventeen, or
- (4) misrepresentation, as defined in section eighteen, or
- (5) mistake, subject to the provisions of sections twenty, twenty one and twenty-two.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation, or mistake.

15. "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation.—It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed.

Illustration.

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code.

A afterwards sues B for breach of contract at Calcutta.

A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Indian Penal Code was not in force at the time when or place where the act was done.

"Undue influence" defined.

16. "Undue influence" is said to be employed in the following cases:—

(1.)—When a person in whom confidence is reposed by another, or who holds a real or apparent authority over that other, makes use of such confidence or authority for the purpose of obtaining an advantage over that other, which, but for such confidence or authority, he could not have obtained;

(2.)—When a person whose mind is enfeebled by old age, illness, or mental or bodily distress, is so treated as to make him consent to that, to which, but for such treatment, he would not have consented, although such treatment may not amount to coercion.

17. "Fraud" means and includes any of the following acts committed, 18
 "Fraud" defined. by a party to a contract,* or with his connivance, — Ac
 or by his agent,† with intent to deceive another
 party thereto or his agent, or to induce him to enter into the contract :—

(1.)—The suggestion, as a fact, of that which is not true, by one who does not believe it to be true ;

(2.)—The active concealment of a fact by one having knowledge or belief of the fact ;

(3.)—A promise made without any intention of performing it ;

(4.)—Any other act fitted to deceive ;

(5.)—Any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract* is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak,† or unless his silence is, in itself, equivalent to speech.

Illustrations.

(a.) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(b.) B is A's daughter, and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(c.) B says to A, "If you do not deny it, I shall assume that the horse is sound." A says nothing. Here A's silence is equivalent to speech.

(d.) A and B, being traders, enter upon a contract.* A has private information of a change in prices which would affect B's willingness to proceed with the contract.* A is not bound to inform B.

"Misrepresentation" defined. 18. 'Misrepresentation' means and in-
 fined. des—

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true ;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him ;

(3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

19. When consent to an agreement is caused by coercion, undue influence, fraud, or misrepresentation, the agreement is
 Voidability of agreements without free consent. a contract voidable at the option of the party whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section seventeen, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

* Read 'agreement.'

† Compare s. 238, *infra*.

‡ See s. 143, *infra*.

1872. *Explanation.*—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Act 9.

Illustrations.

(a.) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

(b.) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(c.) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage-debt redeemed.*

(d.) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A.

(e.) A is entitled to succeed to an estate at the death of B; B dies; C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

Agreement void where both parties are under mistake as to matter of fact.

20. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

Illustrations.

(a.) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away, and the goods lost. Neither party was aware of these facts. The agreement is void.

(b.) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(c.) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

21. A contract is not voidable because it was caused by a mistake as to any law in force in British India; but a mistake as to a law not in force in British India has the same effect as a mistake of fact.

Illustrations.

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation. The contract is not voidable.

A and B make a contract grounded on an erroneous belief as to the law regulating bills of exchange in France. The contract is voidable.

Contract caused by mistake one party as to matter of

22. A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

* *Raul* 'paid off' or 'discharged.'

What considerations and objects are lawful, and what not.

23. The consideration or subject of an agreement is lawful, unless—

1872.
Act 9.

it is forbidden by law ; * or
is of such a nature that, if permitted, it would defeat the provisions of any law ; or
is fraudulent ; or
involves or implies injury to the person or property of another ; or the Court regards it as immoral† or opposed to public policy.‡

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement, of which the object or consideration is unlawful, is void.

Illustrations.

(a.) A agrees to sell his house to B for 10,000 rupees. Here, B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(b.) A promises to pay B 1,000 rupees at the end of six months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here, the promise of each party is the consideration for the promise of the other party, and they are lawful considerations.

(c.) A promises for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here, A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise ; and these are lawful considerations.

(d.) A promises to maintain B's child, and B promises to pay A 1,000 rupees yearly for the purpose. Here, the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(e.) A, B, and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(f.) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(g.) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment by A on his principal.

(h.) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(i.) A's estate is sold for arrears of revenue under the provisions of an Act of the legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

(j.) A, who is B's mukhtâr, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(k.) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code.

* See *infra*, ss. 26, 27, 28, 30.

† See 9 B. L. 1

‡ See 4 B. L. R., O. C. J., 1 ; 9 B. L. R., App. 38 ; 11 B. L. :

1872.

Act 9.

Void Agreements.

24. If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Agreements void, if considerations and objects unlawful in part.

Illustrations.

A promises to superintend, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles. B promises to pay A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise, and the consideration for B's promise, being in part unlawful.

Agreement without consideration void, unless—

25. An agreement made without consideration is void, unless—

(1) it is expressed in writing and registered under the law for the time being in force for the registration of assurances, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless,

(3) it is a promise, made in writing, and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations.

(a.) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.

(b.) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing, and registers it. This is a contract.

(c.) A finds B's purse, and gives it to him. B promises to give A Rs. 50. This is a contract.

(d.) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(e.) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 an account of the debt. This is a contract.

(f.) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract, notwithstanding the inadequacy of the consideration.

(g.) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given. The inadequacy of the consideration is a matter which the Court should take into account in considering whether or not A's consent was freely given.

Agreement in restraint of marriage void.

26. Every agreement in restraint of the marriage of any person, other than a minor,* is void.

1872.
Act 9.

27. Every agreement by which any one is restrained from exercising† Agreement in restraint of trade void. a lawful profession, trade, or business of any kind, is to that extent void.

Exception 1.—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

Exception 2.—Partners may, upon or in anticipation of a dissolution of agreement between partners prior to dissolution; of the partnership, agree that some or all of them will not carry on a business similar to that of the partnership within such local limits as are referred to in the last preceding exception.

Exception 3.—Partners may agree that some one or all of them will not or during continuance of partnership. carry on any business other than that of the partnership during the continuance of the partnership.

28. Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Exception 1.—This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.‡

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Exception 2.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

Agreements void for uncertainty.

29. Agreements, the meaning of which is not certain, or capable of being made certain, are void.

Illustrations.

(a.) A agrees to sell to B 'a hundred tons of oil.' There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(b.) A agrees to sell to B one hundred tons of oil of a specified description known as an article of commerce. There is no uncertainty here to make the agreement void.

* During his or her minority, as to which see Act IX. of 1875.

† These words "do not mean an absolute restriction, and are intended to apply to partial restriction, a restriction limited to some particular place." Per Couch, C.J., 1 B. L. R. 85.

‡ *Kriegler v. Coringa Oil Company*, 1 L. R., 1 Cal. 42.

§ Repealed by the Specific Relief Act (1. of 1877).

1872.

Act 2.

(c.) A, who is a dealer in cocoanut-oil only, agrees to sell to B 'one hundred tons of oil.' The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut-oil.

(d.) A agrees to sell to B 'all the grain in my granary at Rámnagar.' There is no uncertainty here to make the agreement void.

(e.) A agrees to sell to B 'one thousand maunds of rice at a price to be fixed by C.' As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(f.) A agrees to sell to B 'my white horse for rupees five hundred or rupees one thousand.' There is nothing to show which of the two prices was to be given. The agreement is void.

30. Agreements by way of wager are void, and no suit shall be brought

Agreements by way of for recovering anything alleged to be won on any
wager void. wager, or entrusted to any person to abide the
result of any game or other uncertain event on which any wager is made.

This section shall not be deemed to render unlawful a subscription or
contribution, or agreement to subscribe or con-
tribute, made or entered into for or toward any
plate, prize, or sum of money, of the value or amount of five hundred rupees
or upwards, to be awarded to the winner or winners of any horse-race.

Nothing in this section shall be deemed to legalize any transaction
connected with horse-racing, to which the pro-
visions of section 294A of the Indian Penal Code
apply.

Section 294A of the Indian
Penal Code not affected.

CHAPTER III.—OF CONTINGENT CONTRACTS.

31. A 'contingent contract' is a contract to do or not to do something,
'Contingent contract' de- if some event, collateral to such contract, does or
fined. does not happen.

Illustration.

A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

Enforcement of contracts
contingent on an event hap-
pening.

32. Contingent contracts to do or not to do
anything if an uncertain future event happens
cannot be enforced by law unless and until that
event has happened.

If the event becomes impossible, such contracts become void.

Illustrations.

(a.) A makes a contract with B to buy B's horse if A survives C. This con-
tract cannot be enforced by law unless and until C dies in A's lifetime.

(b.) A makes a contract with B to sell a horse to B at a specified price, if C, to
whom the horse has been offered, refuses to buy him. The contract cannot be
enforced by law unless and until C refuses to buy the horse.

(c.) A contracts to pay B a sum of money when B marries C. C dies without
being married to B. The contract becomes void.

33. Contingent contracts to do or not to do anything, if an uncertain

Enforcement of contracts
contingent on an event not
happening.

future event does not happen, can be enforced
when the happening of that event becomes impos-
sible, and not before.

Illustration.

A agrees to pay B a sum of money if a certain ship does not return. The ship
is sunk. The contract can be enforced when the ship sinks.

34 If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

1872.
Act 9.

When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person.

Illustration.

A agrees to pay B a sum of money if B marries C.
C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die, and that C may afterwards marry B.

35. Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, become void, if, at the expiration of the time fixed, such event has not happened, or if before the time fixed, such event becomes impossible.

When contracts become void, which are contingent on happening of specified event within fixed time.

Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired, and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

When contracts may be enforced, which are contingent on specified event not happening within fixed time.

Illustrations.

(a.) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year; and becomes void if the ship is burnt within the year.

(b.) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within a year, or is burnt within the year.

36. Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Agreements contingent on impossible events void.

Illustrations.

(a.) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(b.) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

CHAPTER IV.—OF THE PERFORMANCE OF CONTRACTS.

Contracts which must be performed.

37. The parties to a contract must either perform, or offer to perform,

Obligation of parties to their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance,* unless a contrary intention appears from the contract.

* This probably means "to the extent of the assets received by them as such, and not duly applied."—See *Madho Dass v. Radha Moh.* 9 Panjab Record, 213.

1872.

Illustrations.

Act 9.

(a.) A promises to deliver goods to B on a certain day on payment of Rs. 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives.

(b.) A promises to paint a picture for B by a certain day at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

38. Where a promisor has made an offer of performance to the promisee,

Effect of refusal to accept offer of performance. and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfil the following conditions:—

(1.) It must be unconditional.

(2.) It must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do.

(3.) If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Illustration.

A contracts to deliver to B at his warehouse, on the 1st March 1873, 100 bales of cotton of a particular quality. In order to make an offer of performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

39. When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract,* unless he has signified, by words or conduct, his acquiescence in its continuance.

Illustrations.

(a.) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(b.) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

By whom contracts must be performed.

40. If it appears from the nature of the case that it was the intention

Person by whom promise is to be performed. of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

* And see s. 75, *infra*.

Illustrations.

1872.

Act 9.

(a.) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B, or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(b.) A promises to paint a picture for B. A must perform this promise personally.

41. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Effect of accepting performance from third person.

42. When two or more persons have made a joint promise, then (unless a contrary intention appears by the contract) all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

Devolution of joint liabilities.

43. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one of such* joint promisors to perform the whole of the promise.

Any one of joint promisors may be compelled to perform.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Each promisor may compel contribution.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Sharing of loss by default in contribution.

Explanation.—Nothing in this section shall prevent a surety from recovering, from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Illustrations.

(a.) A, B, and C, jointly promise to pay D 3,000 rupees.* D may compel either A or B or C to pay him 3,000 rupees.

(b.) A, B, and C, jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1,250 rupees from B.

(c.) A, B, and C, are under a joint promise to pay D 3,000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(d.) A, B, and C, are under a joint promise to pay D 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

44. Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.†

Effect of release of one joint promisor.

* The meaning probably is 'any or more of such.'

† See s. 138, *infra*.

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45. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

Illustration.

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to pay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and, after the death of C, with the representatives of B and C jointly.

Time and Place for Performance.

Time for performance of promise, where no application is to be made, and no time is specified.

46. Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation.—The question, 'What is a reasonable time?' is, in each particular case, a question of fact.

47. When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Time and place for performance of promise on certain day, and no application to be made.

Illustration.

A promises to deliver goods at B's warehouse on the 1st January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

48. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

Application for performance on certain day to be at proper time and place.

Explanation.—The question, 'What is a proper time and place?' is, in each particular case, a question of fact.

49. When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Place for performance of promise, where no application to be made, and no place fixed for performance.

Illustration.

A undertakes to deliver a thousand mannds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

Performance in manner or at time prescribed or sanctioned by promisee.

50. The performance of any promise may be made in any manner or at any time which the promisee prescribes or sanctions.

Illustrations.

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(a.) B owes A 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

(b.) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(c.) A owes B 2,000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of the goods operates as a part-payment.

(d.) A desires B, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

Performance of Reciprocal Promises.

Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.

51. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Illustrations.

(a.) A and B contract that A shall deliver goods to B to be paid for by B on delivery.

A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods, unless A is ready and willing to deliver them on payment.

(b.) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

52. Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Illustrations.

(a.) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

(b.) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

53. When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation* from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

Liability of party preventing event on which contract is to take effect.

* See s. 73, *infra*.

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Illustration.

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

54. When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises.

fails to perform it, such promisor cannot claim the

Illustrations.

(a.) A hires B's ship to take in and convey from Calcutta to the Mauritius a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

(b.) A contracts with B to execute certain builders' work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(c.) A contracts with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and B must make compensation.

(d.) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

55. When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable, at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

If, in case of a contract, voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless at the time of such acceptance he gives notice to the promisor of his intention to do so.*

Effect of acceptance of performance at time other than that agreed upon.

the promisee accepts performance of such promise at any time other than that agreed, the promisee

* Compare ss. 62 and 63, *infra*.

CONTRACT.

Agreement to do impossible act.

56. An agreement to do an act impossible in itself is void. **1872.**

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A contract to do an act which, after the contract is made, becomes impossible,* or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.†

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Compensation for loss through non-performance of act known to be impossible or unlawful.

Illustrations.

(a.) A agrees with B to discover treasure by magic. The agreement is void.

(b.) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

(c.) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy. A must make compensation to B for the loss caused to her by the non-performance of his promise.

(d.) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

(e.) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

57. Where persons reciprocally promise, firstly to do certain things

Reciprocal promises to do things legal, and also other things illegal.

which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract; but the second is a void agreement.

Illustration.

A and B agree that A shall sell B a house for 10,000 rupees, but that, if B uses it as a gambling house, he shall pay A 50,000 rupees for it.

The first set of reciprocal promises, namely, to sell the house, and to pay 10,000 rupees for it, is a contract.

The second set is for an unlawful object, namely, that B may use the house as a gambling house, and is a void agreement.

58. In the case of an alternative promise, one branch of which is legal

Alternative promise, one branch being illegal. and the other illegal, the legal branch alone can be enforced.

Illustration.

A and B agree that A shall pay B, 1,000 rupees, for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice, and a void agreement as to the opium.

Appropriation of Payments.

59. Where a debtor, owing several distinct debts to one person, makes a

Application of payment where debt to be discharged is indicated.

payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

* Otherwise than by the default of the contractor.

† But see s. 65, *infra*.

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Illustrations.

(a.) A owes B, among other debts, 1,000 rupees upon a promissory note, which falls due on the 1st June. He owes B no other debt of that amount. On the 1st June A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(b.) A owes B, among other debts, the sum of 567 rupees. B writes to A, and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

60. Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Application of payment where debt to be discharged is not indicated.

61. Where neither party makes any appropriation, the payment shall be applied in discharge of the debts* in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

Application of payment where neither party appropriates.

Contracts which need not be performed.

Effect of novation, rescission, and alteration of contract.

62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Illustrations.

(a.) A owes money to B under a contract. It is agreed between A, B, and C that B shall thenceforth accept C as his debtor instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b.) A owes B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract, and extinguishes the old.

(c.) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.

63. Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance,† or may accept, instead of it, any satisfaction which he thinks fit.

Promisee may dispense with or remit performance of promise.

Illustrations.

(a.) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(b.) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(c.) A owes B 5,000 rupees. C pays to B 1,000 rupees, and C accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.‡

* Probably the lawful debts referred to in s. 60.

† See s. 41, *supra*.

‡ But see s. 135, *infra*.

(d.) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts the sum of 2,000 rupees. This is a discharge of the whole debt, whatever it may be its amount.

(e.) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a compensation of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand.

64. When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in, which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.†

65. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

Illustrations.

(a.) A pays B 1,000 rupees, in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(b.) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the first of May. He is bound to pay A for them.

(c.) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her a hundred rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

(d.) A contracts to sing for B at a concert for 1,000 rupees, which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the 1,000 rupees paid in advance.

66. The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.‡

67. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Illustration.

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non-performance of the contract, if it is caused by such neglect or refusal.

* Sic. Read 'Composition.'

† See s. 75, *infra*.

‡ See ss. 3 and 5, *supra*.

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CHAPTER V.—OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT.

Act 9.

68. If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Claim for necessities supplied to person incapable of contracting, or on his account.

he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Illustrations.

(a.) A supplies B, a lunatic, with necessities suitable to his condition in life. A is entitled to be reimbursed from B's property.

(b.) A supplies the wife and children of B, a lunatic, with necessities suitable to their condition in life. A is entitled to be reimbursed from B's property.

Reimbursement of person paying money due by another, in payment of which he is interested.

69. A person, who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Illustration.

B holds land in Bengal, on a lease granted by A, the zamindár. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue-law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Obligation of person enjoying benefit of non-gratuitous act.

he is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Illustrations.

(a.) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(b.) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

71. A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.*

Responsibility of finder of goods.

72. A person to whom money has been paid or any thing delivered by mistake or under coercion† must repay or return it.

Illustrations.

(a.) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(b.) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

* See ss. 151 and 152, *infra*.

† See s. 15, *supra*.

CHAPTER VI.—OF THE CONSEQUENCES OF BREACH OF CONTRACT.

1872.

Act 9.

73. When a contract has been broken, the party who suffers by such breach is entitled to receive from the party who

Compensation for loss or damage caused by breach of contract.

has broken the contract compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

When an obligation resembling those created by contract has been

Compensation for failure to discharge obligation resembling those created by contract.

incurred, and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default as if such person had contracted to dis-

charge it, and had broken his contract.

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Illustrations.

(a.) A contracts to sell and deliver 50 maunds of saltpetre to B at a certain price, to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract-price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(b.) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo, which A is to provide, and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(c.) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract-price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(d.) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract-price over the price which B can obtain for the ship at the time of the breach of promise.

(e.) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market-price at the time when it actually arrived.

(f.) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(g.) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freight rises, and, on the first of January, the hire obtainable for the ship is higher than the contract-price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract-price and the price for which B could hire a similar ship for a year on and from the first of January.

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(h.) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract-price of the iron and the sum for which A could have obtained and delivered it.

(i.) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(j.) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(k.) A contracts with B to make and deliver to B, by a fixed day for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract-price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(l.) A, a builder, contracts to erect and finish a house by the first of January in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down, and has to be rebuilt by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

(m.) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(n.) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(o.) A contracts to deliver 50 maunds of saltpetre to B on the first of January at a certain price. B, afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the market-price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market-price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(p.) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

(q.) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed

time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the difference between the contract-price of the cloth and its market-price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

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(r.) A, a ship-owner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one-half of his passage-money. The ship does not sail on the first of January, and B, after being, in consequence, detained in Calcutta for some time, and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

74. When a contract has been broken, if a sum is named in the contract

Title to compensation for breach of contract in which a sum is named as payable in case of breach.

as the amount to be paid in case of such breach, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the

party who has broken the contract reasonable compensation not exceeding the amount so named.

Exception.—When any person enters into any bail-bond, recognizance, or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Government of India or of any Local Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

Illustrations.

(a.) A contracts with B to pay B Rs. 1,000 if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 1,000, as the Court considers reasonable.

(b.) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B Rs. 5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation, not exceeding Rs. 5,000, as the Court considers reasonable.

(c.) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

75. A person who rightfully rescinds a contract is entitled to

Partly rightfully rescinding contract, entitled to compensation.

compensation for any damage which he has sustained through the non-fulfilment of the contract.

Illustration.

A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

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CHAPTER VII.—SALE OF GOODS.

When property in goods sold passes.

'Goods' defined.

76. In this chapter, the word 'goods' means and includes every kind of moveable property.*

77. 'Sale' is the exchange of property for a price. It involves the transfer of the ownership of the thing sold from the seller to the buyer.

'Sale' defined.

Sale how effected.

78. Sale is effected by offer and acceptance of ascertained goods for a price,

or of a price for ascertained goods,

together with payment of the price or delivery of the goods; or with tender, part-payment, earnest, or part-delivery; or with an agreement, express or implied, that the payment or delivery, or both, shall be postponed.

Where there is a contract for the sale of ascertained goods, the property in the goods sold passes to the buyer when the whole or part of the price, or when the earnest, is paid, or when the whole or part of the goods is delivered.†

If the parties agree, expressly or by implication, that the payment or delivery, or both, shall be postponed, the property passes as soon as the proposal for sale is accepted.

Illustrations.

(a.) B offers to buy A's horse for 500 rupees. A accepts B's offer, and delivers the horse to B. The horse becomes B's property on delivery.

(b.) A sends goods to B, with the request that he will buy them at a stated price if he approves of them, or return them if he does not approve of them. B retains the goods, and informs A that he approves of them. The goods become B's when B retains them.

(c.) B offers A, for his horse, 1,000 rupees, the horse to be delivered to B on a stated day, and the price to be paid on another stated day. A accepts the offer. The horse becomes B's as soon as the proposal is accepted.

(d.) B offers A, for his horse, 1,000 rupees, on a month's credit. A accepts the offer. The horse becomes B's as soon as the offer is accepted.

(e.) B, on the first January, offers to A, for a quantity of rice, 2,000 rupees, to be paid on the first March following, the rice not to be taken away till paid for. A accepts the offer. The rice becomes B's as soon as the offer is accepted.

Transfer of ownership of thing sold, which has yet to be ascertained, made, or finished.

79. Where there is a contract for the sale of a thing which has yet to be ascertained, made, or finished,‡ the ownership of the thing is not transferred to the buyer until it is ascertained, made, or finished.

Illustration.

B orders A, a barge-builder, to make him a barge. The price is not made payable by instalments. While the barge is building, B pays to A money from time to time on account of the price. The ownership of the barge does not pass to B until it is finished.

80. Where, by a contract for the sale of goods, the seller is to do anything to them for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such thing has been done.

Completion of sale of goods, which the seller is to put into state in which buyer is to take them.

* 'Goods' would thus include money and negotiable instruments, Act I. of 1868, s. 2, cl. 6. This cannot have been intended.

† i.e., when the whole is delivered, or when part is delivered in progress of delivery of the whole. See s. 92, *infra*.

‡ See s. 80.

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A, a ship-builder, contracts to sell to B, for a stated price, a vessel which is lying in A's yard; the vessel to be rigged and fitted for a voyage, and the price to be paid on delivery. Under the contract, the property in the vessel does not pass to B until the vessel has been rigged, fitted up, and delivered.

Completion of sale of goods, when seller has to do anything thereto in order to ascertain price.

81. Where anything remains to be done to the goods by the seller for the purpose of ascertaining the amount of the price, the sale is not complete until this has been done.

Illustrations.

(a.) A, the owner of a stack of bark, contracts to sell it to B, weigh and deliver it, at 100 rupees per ton. B agrees to take and pay for it on a certain day. Part is weighed and delivered to B; the ownership of the residue is not transferred to B until it has been weighed pursuant to the contract.

(b.) A contracts to sell a heap of clay to B at a certain price per ton. B is, by the contract, to load the clay in his own carts, and to weigh each load at a certain weighing machine, which his carts must pass on their way from A's grounds to B's place of deposit. Here, nothing more remains to be done by the seller; the sale is complete, and the ownership of the heap of clay is transferred at once.

Completion of sale, when goods are unascertained at date of contract.

82. Where the goods are not ascertained at the time of making the contract of sale, it is necessary to the completion of the sale that the goods shall be ascertained.*

Illustration.

A agrees to sell to B 20 tons of oil in A's cisterns. A's cisterns contain more than 20 tons of oil. No portion of the oil has become the property of B.

83. Where the goods are not ascertained at the time of making the agreement for sale, but goods answering the description in the agreement are subsequently appropriated by one party for the purpose of the agreement, and that appropriation is assented to by the other, the goods have been ascertained, and the sale is complete.

Illustration.

A, having a quantity of sugar in bulk more than sufficient to fill 20 hogsheads, contracts to sell B 20 hogsheads of it. After the contract, A fills 20 hogsheads with the sugar, and gives notice to B that the hogsheads are ready, and requires him to take them away. B says he will take them as soon as he can. By this appropriation by A, and assent by B, the sugar becomes the property of B.

84. Where the goods are not ascertained at the time of making the contract of sale, and, by the terms of the contract, the seller is to do an act with reference to the goods which cannot be done until they are appropriated to the buyer, the seller has a right to select any goods answering to the contract, and, by his doing so, the goods are ascertained.

Illustration.

B agrees with A to purchase of him, at a stated price, to be paid on a fixed day, 50 maunds of rice out of a larger quantity in A's granary. It is agreed that B shall send sacks for the rice, and that A shall put the rice into them. B does so, and A puts 50 maunds of rice into the sacks. The goods have been ascertained.

85. Where an agreement is made for the sale of immoveable and moveable property combined, the ownership of the moveable property does not pass before the transfer of the immoveable property.

Transfer of ownership of moveable property, when sold together with immoveable.

* See s. 79.

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A agrees with B for the sale of a house and furniture. The ownership of the furniture does not pass to B until the house is conveyed to B.

Buyer to bear loss after goods have become his property.

86. When goods have become the property of the buyer, he must bear any loss arising from their destruction or injury.

Illustrations.

(a.) B offers, and A accepts, 100 rupees for a stack of fire-wood standing on A's premises, the fire-wood to be allowed to remain on A's premises till a certain day, and not to be taken away till paid for. Before payment, and while the fire-wood is on A's premises, it is accidentally destroyed by fire. B must bear the loss.

(b.) A bids 1,000 rupees for a picture at a sale by auction. After the bid, it is injured by an accident. If the accident happens before the hammer falls, the loss falls on the seller; if afterwards, on A.

87. When there is a contract for the sale of goods not yet in existence, the ownership of the goods may be transferred by acts done, after the goods are produced in pursuance of the contract, by the seller, or by the buyer with the seller's assent.

Transfer of ownership of goods agreed to be sold while non-existent.

Illustrations.

(a.) A contracts to sell to B, for a stated price, all the indigo which shall be produced at A's factory during the ensuing year. A, when the indigo has been manufactured, gives B an acknowledgment that he holds the indigo at his disposal. The ownership of the indigo vests in B from the date of the acknowledgment.

(b.) A, for a stated price, contracts that B may take and sell any crops that shall be grown on A's land in succession to the crops then standing. Under this contract, B, with the assent of A, takes possession of some crops grown in succession to the crops standing at the time of the contract. The ownership of the crops, when taken possession of, vests in B.

(c.) A, for a stated price, contracts that B may take and sell any crops that shall be grown on his land in succession to the crops then standing. Under this contract, B applies to A for possession of some crops grown in succession to the crops which were standing at the time of the contract. A refuses to give possession. The ownership of the crops has not passed to B, though A may commit a breach of contract in refusing to give possession.

88. A contract for the sale of goods to be delivered at a future day is binding, though the goods are not in the possession of the seller at the time of making the contract, and though, at that time, he has no reasonable expectation of acquiring them otherwise than by purchase.

Contract to sell and deliver at a future day goods not in seller's possession at date of contract.

Illustration.

A contracts, on the first January, to sell B 50 shares in the East Indian Railway Company, to be delivered and paid for on the first March of the same year. A, at the time of making the contract, is not in possession of any shares. The contract is valid.

89. Where the price of goods sold is not fixed by the contract of sale, the buyer is bound to pay the seller such a price as the Court considers reasonable.

Determination of price not fixed by contract.

Illustration.

B, living in Patna, orders of A, a coach-builder at Calcutta, a carriage of a particular description. Nothing is said by either as to the price. The order having been executed, and the price being in dispute between the buyer and the seller, the Court must decide what price it considers reasonable.

- 90.** Delivery of goods sold may be made by doing anything which has the effect of putting them in the possession of the buyer, or of any person authorized to hold them on his behalf. 1872.
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Illustrations.

- (a.) A sells to B a horse, and causes or permits it to be removed from A's stables to B's. The removal to B's stable is a delivery.
- (b.) B in England orders 100 bales of cotton from A, a merchant of Bombay, and sends his own ship to Bombay for the cotton. The putting the cotton on board the ship is a delivery to B.
- (c.) A sells to B certain specific goods which are locked up in a godown. A gives B the key of the godown in order that he may get the goods. This is a delivery.
- (d.) A sells to B five specific casks of oil. The oil is in the warehouse of A. B sells the five casks to C. A receives warehouse-rent for them from C. This amounts to a delivery of the oil to C, as it shows an assent on the part of A to hold the goods as warehouseman of C.
- (e.) A sells to B 50 maunds of rice in the possession of C, a warehouseman. A gives B an order to C to transfer the rice to B, and C assents to such order, and transfers the rice in his books to B. This is a delivery.
- (f.) A agrees to sell B five tons of oil, at 1,000 rupees per ton, to be paid for at the time of delivery. A gives to C, a wharfinger, at whose wharf he had twenty tons of the oil, an order to transfer five of them into the name of B. C makes the transfer in his books, and gives A's clerk a notice of the transfer for B. A's clerk takes the transfer notice to B, and offers to give it to him on payment of the price of the oil. B refuses to pay. There has been no delivery to B, as B never assented to make C his agent to hold for him the five tons selected by A.

- 91.** A delivery to a wharfinger or carrier of the goods sold has the same effect as a delivery to the buyer, but does not render the buyer liable for the price of goods which do not reach him, unless the delivery is so made as to enable him to hold the wharfinger or carrier responsible for the safe custody or delivery of the goods.

Illustration.

B, at Agra, orders of A, who lives at Calcutta, three casks of oil to be sent to him by railway. A takes three casks of oil directed to B to the railway station, and leaves them there without conforming to the rules which must be complied with in order to render the Railway Company responsible for their safety. The goods do not reach B. There has not been a sufficient delivery to charge B in a suit for the price.

- 92.** A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

Illustrations.

- (a.) A ship arrives in a harbour laden with a cargo consigned to A, the buyer of the cargo. The captain begins to discharge it, and delivers over part of the goods to A in progress of the delivery of the whole. This is a delivery of the cargo to A for the purpose of passing the property in the cargo.
- (b.) A sells to B a stack of fire-wood, to be paid for by B on delivery. After the sale, B applies for and obtains from A leave to take away some of the fire-wood. This has not the legal effect of delivery of the whole.
- (c.) A sells 50 maunds of rice to B. The rice remains in A's warehouse. After the sale, B sells to C 10 maunds of the rice, and A, at B's desire, sends the 10 maunds to C. This has not the legal effect of a delivery of the whole.

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Seller not bound to deliver until buyer applies for delivery.

93. In the absence of any special promise, the seller of goods is not bound to deliver them until the buyer applies for delivery.*

94. In the absence of any special promise as to delivery, goods sold are to be delivered at the place at which they are at the time of the sale; and goods contracted to be sold are to be delivered at the place at which they are at the time of the contract for sale, or, if not then in existence, at the place at which they are produced.

Place for delivery.

Seller's Lien.

95. Unless a contrary intention appears by the contract, a seller has a lien† on sold goods as long as they remain in his possession, and the price or any part of it remains unpaid.‡

Seller's lien.

96. Where, by the contract, the payment is to be made at a future day, but no time is fixed for the delivery of the goods, the seller has no lien, and the buyer is entitled to a present delivery of the goods without payment. But if the buyer becomes insolvent before delivery of the goods, or if the time appointed for payment arrives before the delivery of the goods, the seller may retain the goods for the price.

Explanation.—A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them.

'Insolvency' defined.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse. Before the expiry of the three months, B becomes insolvent. A may retain the goods for the price.

97. Where, by the contract, the payment is to be made at a future day, and the buyer allows the goods to remain in the possession of the seller until that day, and does not then pay for them, the seller may retain the goods for the price.

Seller's lien where payment to be made at future day, and buyer allows goods to remain in seller's possession.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse till the expiry of the three months, and then does not pay for them. A may retain the goods for the price.

98. A seller, in possession of goods sold, may retain them for the price against any subsequent buyer, unless the seller has recognized the title of the subsequent buyer.

Seller's lien against subsequent buyer.

Stoppage in Transit.

99. A seller who has parted with the possession of the goods, and has not received the whole price, may, if the buyer becomes insolvent, stop the goods while they are in transit to the buyer.

Power of seller to stop in transit.

100. Goods are to be deemed in transit while they are in the possession of the carrier, or lodged at any place in the course of transmission to the buyer, and

When goods are to be deemed in transit.

* See s. 46, *supra*. † For the amount of the purchase-money. ‡ Or untendered.

are not yet come into the possession of the buyer or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged.

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Illustrations.

(a.) B, living at Madras, orders goods of A, at Patna, and directs that they shall be sent to Madras. The goods are sent to Calcutta, and there delivered to C, a wharfinger, to be forwarded to Madras. The goods, while they are in the possession of C, are in transit.

(b.) B, at Delhi, orders goods of A, at Calcutta. A consigns and forwards the goods to B at Delhi. On arrival there, they are taken to the warehouse of B, and left there. B refuses to receive them, and immediately afterwards stops payment. The goods are in transit.

(c.) B, who lives at Puná, orders goods of A at Bombay. A sends them to Puná by C, a carrier appointed by B. The goods arrive at Puná, and are placed by C, at B's request, in C's warehouse for B. The goods are no longer in transit.

(d.) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. The transit is at an end when the cotton is delivered on board the ship.

(e.) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. A delivers the cotton on board the ship, and takes bills of lading from the master, making the cotton deliverable to A's order or assigns. The cotton arrives at London, but, before coming into B's possession, B becomes insolvent. The cotton has not been paid for. A may stop the cotton.

101. The seller's right of stoppage does not, except in the cases herein-

Continuance of right of stoppage. after mentioned, cease on the buyer's reselling the goods while in transit, and receiving the price, but continues until the goods have been delivered to the second buyer, or to some person on his behalf.

102. The right of stoppage ceases if the buyer, having obtained a bill of

Cessation of right on assignment, by buyer, of bill of lading. lading or other document showing title to the goods,* assigns it, while the goods are in transit, to a second buyer, who is acting in good faith, and who gives valuable consideration for them.

Illustrations.

(a.) A sells and consigns certain goods to B, and sends him the bill of lading. A being still unpaid, B becomes insolvent, and, while the goods are in transit, assigns the bill of lading for cash to C, who is not aware of his insolvency. A cannot stop the goods in transit.

(b.) A sells and consigns certain goods to B. A being still unpaid, B becomes insolvent, and, while the goods are still in transit, assigns the bill of lading for cash to C, who knows that B is insolvent. The assignment not being in good faith, A may still stop the goods in transit.

103. Where a bill of lading or other instrument of title to any goods

Stoppage where bill of lading is pledged to secure specific advance. is assigned by the buyer of such goods by way of pledge, to secure an advance made specifically upon it, in good faith, the seller cannot, except on payment or tender to the pledgee of the advance so made, stop the goods in transit.

Illustrations.

(a.) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C, to secure a specific advance of 5,000 rupees made to him upon the bill of lading by C. B becomes insolvent, being indebted to C to the amount of 9,000 rupees. A is not entitled to stop the goods except on payment or tender to C of 5,000 rupees.

* See s. 108, exception 1, *infra*.

1872. (b.) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C, to secure the sum of 5,000 rupees due from him to C, upon a general balance of account. B becomes insolvent. A is entitled to stop the goods in transit without payment or tender to C of the 5,000 rupees.

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104. The seller may effect stoppage in transit, either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other depository in whose possession they are.

Stoppage how effected.

105. Such notice may be given, either to the person who has the immediate possession of the goods, or to the principal whose servant has possession. In the latter case, the notice must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer.

Notice of seller's claim.

106. Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid.

Right of seller on stoppage.

Illustration.

A sells to B 100 bales of cotton; 60 bales having come into B's possession, and 40 being still in transit. B becomes insolvent, and A, being still unpaid, stops the 40 bales in transit. A is entitled to hold the 40 bales until the price of the 100 bales is paid.

Resale.

107. Where the buyer of goods fails to perform his part of the contract, either by not taking the goods sold to him, or by not paying for them, the seller having a lien on the goods, or having stopped them in transit, may, after giving notice to the buyer of his intention to do so, resell them after the lapse of a reasonable time, and the buyer must bear any loss, but is not entitled to any profit, which may occur on such resale.

Resale on buyer's failure to perform.

Title.

108. No seller can give to the buyer of goods a better title to those goods than he has himself, except in the following cases:—

Title conveyed by seller of goods to buyer.

Exception 1.—When any person is, by the consent of the owner, in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or other document showing title to goods, he may transfer the ownership of the goods, of which he is so in possession, or to which such documents relate, to any other person, and give such person a good title thereto, notwithstanding any instructions of the owner to the contrary.* Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods or documents has no right to sell the goods.

Exception 2.—If one of several joint-owners of goods has the sole possession of them by the permission of the co-owners, the ownership of the goods is transferred to any person who buys them of such joint-owner in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods has no right to sell them.

* It has been held that this exception does not apply 'where there is only a qualified possession, such as a hirer of goods has, or where the possession is for a specific purpose.'—*Greenwood v. Holquette*, 12 B. L. R. 46.

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Exception 3.—When a person has obtained possession of goods under a contract voidable at the option of the other party thereto, the ownership of the goods is transferred to a third person, who, before the contract is rescinded, buys them in good faith of the person in possession; unless the circumstances which render the contract voidable amounted to an offence committed by the person in possession or those whom he represents.

In this case the original seller is entitled to compensation from the original purchaser for any loss which the seller may have sustained by being prevented from rescinding the contract.

Illustrations.

(a.) A buys from B, in good faith, a cow which B had stolen from C. The property in the cow is not transferred to A.

(b.) A, a merchant, entrusts B, his agent, with a bill of lading relating to certain goods, and instructs B not to sell the goods for less than certain price, and not to give credit to D. B sells the goods to D for less than that price, and gives D three months' credit. The property in the goods passes to D.

(c.) A sells to B goods of which he has the bill of lading, but the bill of lading is made out for delivery of the goods to C, and it has not been endorsed by C. The property is not transferred to B.

(d.) A, B, and C, are joint Hindú brothers, who own certain cattle in common. A is left by B and C in possession of a cow, which he sells to D. D purchases *bona fide*. The property in the cow is transferred to D.

(e.) A, by a misrepresentation not amounting to cheating, induces B to sell and deliver to him a horse. A sells the horse to C before B has rescinded the contract. The property in the horse is transferred to C; and B is entitled to compensation from A for any loss which B has sustained by being prevented from rescinding the contract.

(f.) A compels B by wrongful intimidation, or induces him by cheating or forgery, to sell him a horse, and, before B rescinds the contract, sells the horse to C. The property is not transferred to C.

Warranty.

109. If the buyer, or any person claiming under him, is, by reason of Seller's responsibility for the invalidity of the seller's title, deprived of the badness of title. thing sold, the seller is responsible to the buyer, or the person claiming under him, for loss caused thereby, unless a contrary intention appears by the contract.

Establishment of implied warranty of goodness or quality.

Warranty of soundness implied on sale of provisions.

Warranty of bulk implied on sale by sample.

110. An implied warranty of goodness or quality may be established by the custom of any particular trade.

111. On the sale of provisions, there is an implied warranty that they are sound.

112. On the sale of goods by sample, there is an implied warranty that the bulk is equal in quality to the sample.*

113. Where goods are sold as being of a certain denomination, there is a Warranty implied where goods are sold as being of a certain denomination. an implied warranty that they are such goods as are commercially known by that denomination, although the buyer may have bought them by sample, or after inspection of the bulk.

Explanation.—But if the contract specifically states that the goods, though sold as of a certain denomination, are not warranted to be of that denomination, there is no implied warranty.

* See s. 118, *infra*.

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Illustrations.

(a.) A, at Calcutta, sells to B twelve bags of "waste silk," then on its way from Murshidabad to Calcutta. There is an implied warranty by A that the silk shall be such as is known in the market under the denomination of "waste silk."

(b.) A buys, by sample, and after having inspected the bulk, 100 bales of "Fair Bengal" cotton. The cotton proves not to be such as is known in the market as "Fair Bengal." There is a breach of warranty.

114. Where goods have been ordered for a specified purpose, for which Warranty where goods ordered for a specified purpose. goods of the denomination mentioned in the order are usually sold, there is an implied warranty by the seller that the goods supplied are fit for the purpose.*

• *Illustration.*

B orders of A, a copper-manufacturer, copper for sheathing a vessel. A, on this order, supplies copper. There is an implied warranty that the copper is fit for sheathing a vessel.

Warranty on sale of article of well-known ascertained kind.

115. Upon the sale of an article of a well-known ascertained kind, there is no implied warranty of its fitness for any particular purpose.

Illustration.

B writes to A, the owner of a patent invention for cleaning cotton—"Send me your patent cotton-cleaning machine to clean the cotton at my factory." A sends the machine according to order. There is an implied warranty by A that it is the article known as A's patent cotton-cleaning machine, but none that it is fit for the particular purpose of cleaning the cotton at B's factory.

116. In the absence of fraud and of any express warranty of quality, Seller when not responsible for latent defects. the seller of an article which answers the description under which it was sold is not responsible for a latent defect in it.

Illustration.

A sells to B a horse. It turns out that the horse had, at the time of the sale, a defect of which A was unaware. A is not responsible for this.

117. Where a specific article, sold with a warranty, has been delivered Buyer's right on breach of warranty. and accepted, and the warranty is broken, the sale is not thereby rendered voidable; but the buyer is entitled to compensation from the seller for loss caused by the breach of warranty.

Illustration.

A sells and delivers to B a horse warranted sound. The horse proves to have been unsound at the time of sale. The sale is not thereby rendered voidable, but B is entitled to compensation from A for loss caused by the unsoundness.

118. Where there has been a contract, with a warranty, for the sale of Right of buyer on breach of warranty in respect of goods not ascertained. goods which, at the time of the contract, were not ascertained or not in existence, and the warranty is broken, the buyer may

accept the goods or refuse to accept the goods when tendered, or keep the goods for a time reasonably sufficient for examining and trying them, and then refuse to accept them; provided that, during such time, he exercises no other act of ownership over them than is necessary for the purpose of examination and trial.

* See s. 118, *infra*.

In any case the buyer is entitled to compensation from the seller for any loss caused by the breach of warranty; but if he accepts the goods, and intends to claim compensation, he must give notice of his intention to do so within a reasonable time after discovering the breach of the warranty. 1872. Act 9.

Illustrations.

(a.) A agrees to sell and, without application on B's part, deliver to B 200 bales of unascertained cotton by sample. Cotton not in accordance with sample is delivered to B. B may return it if he has not kept it longer than a reasonable time for the purpose of examination.

(b.) B agrees to buy of A twenty-five sacks of flour by sample. The flour is delivered to B, who pays the price. B, upon examination, finds it not equal to sample; B afterwards uses two sacks, and sells one. He cannot now rescind the contract and recover the price, but he is entitled to compensation from A for any loss caused by the breach of warranty.

(c.) B makes two pairs of shoes for A by A's order. When the shoes are delivered, they do not fit A. A keeps both pairs for a day. He wears one pair for a short time in the house, and takes a long walk out of doors in the other pair. He may refuse to accept the first pair, but not the second. But he may recover compensation for any loss sustained by the defect of the second pair.

Miscellaneous.

119. When the seller sends to the buyer goods not ordered with goods ordered, the buyer may refuse to accept any of the goods so sent, if there is risk or trouble in separating the goods ordered from the goods not ordered.

When buyer may refuse to accept, if goods not ordered are sent with goods ordered.

Illustration.

A orders of B specific articles of china. B sends these articles to A in a hamper, with other articles of china which had not been ordered. A may refuse to accept any of the goods sent.

120. If a buyer wrongfully refuses to accept the goods sold to him, this amounts to a breach of the contract of sale.

Effect of wrongful refusal to accept.

121. When goods sold have been delivered to the buyer, the seller is not entitled to rescind the contract, on the buyer's failing to pay the price at the time fixed, unless it was stipulated by the contract that he should be so entitled.

Right of seller as to rescission, on failure of buyer to pay price at time fixed.

122. Where goods are sold by auction, there is a distinct and separate sale of the goods in each lot, by which the ownership thereof is transferred as each lot is knocked down.

Sale and transfer of lots sold by auction.

123. If, at a sale by auction, the seller makes use of pretended biddings to raise the price, the sale is voidable at the option of the buyer.

Effect of use, by seller, of pretended biddings to raise price.

CHAPTER VIII.—OF INDEMNITY AND GUARANTEE.

124. A contract by which one party promises to save the other from loss caused to him by the contract of the promisor himself, or by the conduct of any other person, is called a 'contract of indemnity.'

defined.

1872.

*Illustration.***Act 9.**

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

125. The promisee in a contract of indemnity, acting within the scope Rights of indemnity-holder of his authority, is entitled to recover from the when sued. promisor—

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies ;

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit ;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

126. A 'contract of guarantee' is a contract to perform the promise, or discharge the liability, of a third person in case of 'Contract of guarantee,' 'surety,' 'principal debtor,' his default. The person who gives the guarantee and 'creditor.' is called the 'surety ;' the person in respect of whose default the guarantee is given is called the 'principal debtor,' and the person to whom the guarantee is given is called the 'creditor.' A guarantee may be either oral or written.

127. Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the Consideration for guarantee. surety for giving the guarantee.

Illustrations.

(a) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(b) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that, if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(c.) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

128. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Surety's liability.

Illustration.

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable, not only for the amount of the bill, but also for any interest and charges which may have become due on it.

129. A guarantee which extends to a series of transactions is called a 'Continuing guarantee.' 'continuing guarantee.'

Illustrations.

(a.) A, in consideration that B will employ C in collecting the rents of B's zamindari, promises B to be responsible, to the amount of 5,000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(b.) A guarantees payment to B, a tea-dealer, to the amount of £100, for any tea he may from time to time supply to C. B supplies C with tea to above the value of £100, and C pays B for it. Afterwards B supplies C with tea to the value of £200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100

(c.) A guarantees payment to B of the price of five sacks of flour, to be delivered by B to C, and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

Revocation of continuing guarantee.

130. A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

Illustrations.

(a.) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees, on default of C.

(b.) A guarantees to B, to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

131. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

Revocation of continuing guarantee by surety's death.

132. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

Liability of two persons primarily liable, not affected by arrangement between them that one shall be surety on other's default.

Illustration.

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

133. Any variance made, without the surety's consent, in the terms of the contract between the principal and the creditor, discharges the surety as to transactions subsequent to the variance.

Discharge of surety by variance in terms of contract.

Illustrations.

(a.) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(b.) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of the legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the later Act.

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(c.) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him, and not by a fixed salary. A is not liable for subsequent misconduct of B.

(d.) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards B becomes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(e.) C contracts to lend B 5,000 rupees on the first March. A guarantees repayment. C pays the 5,000 rupees to B on the first January. A is discharged from his liability, as the contract has been varied, inasmuch as C might sue B for the money before the first of March.

134. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. *

Discharge of surety by release or discharge of principal debtor.

Illustrations.

(a.) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed, and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(b.) A contracts with B to grow a crop of indigo on A's land and to deliver it to B at a fixed rate, and C guarantees A's performance of his contract. B diverts a stream of water which is necessary for the irrigation of A's land, and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

(c.) A contracts with B for a fixed price to build a house for B, within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

135. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.

Surety not discharged when contract made with third person to give time to principal.

136. Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Illustration.

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

137. Mere forbearance on the part of the creditor to sue the principal debtor, or to enforce any other remedy against him, does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Creditor's forbearance to sue does not discharge surety.

Illustration.

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

* See *supra*, ss. 30, 53, 54, 55, 62, 63, 67, 118, 120.

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138. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.*

Release of one co-surety does not discharge others.

Discharge of surety by creditor's act or omission impairing surety's eventual remedy.

139. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Illustrations.

(a) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.†

(b) C lends money to B on the security of a joint and several promissory note made in C's favour by B, and by A, as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture, and apply the proceeds in discharge of the note. Subsequently, C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realized. A is discharged from liability on the note.

(c) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

140. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.‡

141. A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.§

Illustrations.

(a) C advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(b) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.

(c) A, as surety for B, makes a bond jointly with B to C, to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently, C gives up the further security. A is not discharged.

142. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

Guarantee obtained by misrepresentation, invalid.

* See s. 44, *supra*.
† See s. 133, *supra*.

‡ e.g., the right to stop in transit.
§ See s. 130, *supra*.

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Guarantee obtained by concealment, invalid.

143: Any guarantee which the creditor has obtained by means of keeping silence as to a material circumstance is invalid.

Illustrations.

(a.) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duty accounting. C gives his guarantee for B's duty accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(b.) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

144. Where a person gives a guarantee upon a contract that the creditor

Guarantee on contract that creditor shall not act on it until co-surety joins.

shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.*

145. In every contract of guarantee there is an implied promise by the

Implied promise to indemnify surety.

principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Illustrations.

(a.) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but he is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

(b.) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A, to secure the amount. C, the holder of the bill, demands payment of it from A, and, on A's refusal to pay, sues him upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(c.) A guarantees to C, to the extent of 2,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

146. Where two or more persons are co-sureties for the same debt

Co-sureties liable to contribute equally.

or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.†

Illustration.

(a.) A, B, and C, are sureties to D for the sum of 3,000 rupees lent to E. E makes default in payment. A, B, and C, are liable, as between themselves, to pay 1,000 rupees each.

(b.) A, B, and C, are sureties to D for the sum of 1,000 rupees lent to E, and there is a contract between A, B, and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter, and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

* See s. 33, *supra*.

† See s. 43, *supra*.

147. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.* 1872.
Act 9.

Illustrations.

(a.) A, B, and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B, and C, are each liable to pay 10,000 rupees.

(b.) A, B, and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

(c.) A, B, and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees. A, B, and C, have to pay each the full penalty of his bond.

CHAPTER IX.—OF BAILMENT.

148. A 'bailment' is the delivery of goods by one person to another 'bailment,' 'bailor,' and for some purpose, upon a contract that they shall, 'bailee' defined. when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the 'bailor.' The person to whom they are delivered is called the 'bailee.'

Explanation.—If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

149. The delivery to the bailee may be made by doing anything which Delivery to bailee how has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

150. The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which faults in goods bailed. materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations.

(a.) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

(b.) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

* See s. 43, *supra*.

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Act 9.

151. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality, and value as the goods bailed.

152. The bailee, in the absence of any special contract, is not responsible for the loss, destruction, or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

153. A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

Termination of bailment by
bailee's act inconsistent with
conditions.

Illustration.

A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

154. If the bailee makes any use of the goods bailed which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Liability of bailee making
unauthorized use of goods
bailed.

Illustrations.

(a.) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

(b.) A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care, but marches to Katak instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

155. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

Effect of mixture, with
bailor's consent, of his goods
with bailee's.

156. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

Effect of mixture without
bailor's consent, when the
goods can be separated.

Illustration.

A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark. A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage.

157. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods, and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Effect of mixture, without
bailor's consent, when the
goods cannot be separated.

Illustration.

A bails a barrel of Cape flour, worth Rs. 45, to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

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Act 9.

158. Where, by the conditions of the bailment, the goods are to be kept by the bailor, or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

159. The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose. But if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.*

160. It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.†

161. If, by the fault of the bailee, the goods are not returned, delivered, or tendered at the proper time, he is responsible to the bailor for any loss, destruction, or deterioration of the goods from that time.

Termination of gratuitous bailment by death.

162. A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

163. In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

Illustration.

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

164. The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them.

165. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

166. If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.‡

167. If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

* See Story, *Bailments*, § 258.

† But see ss 24, 152, *supra*, and 170, *infra*, to the provisions of which this section must be subject.

‡ See Act I. of 1872, s. 117.

1872.

Act 9.

168. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.*

169. When a thing, which is commonly the subject of sale, is lost, if the owner cannot, with reasonable diligence, be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

(1) when the thing is in danger of perishing or of losing the greater part of its value; or,

(2) when the lawful charges of the finder in respect of the thing found amount to two-thirds of its value.†

170. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Illustrations.

(a) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

(b) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give A three months' credit for the price. B is not entitled to retain the coat until he is paid.

171. Bankers, factors, wharfingers, attorneys of a High Court, and General lien of bankers, policy-brokers, may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods‡ bailed to them;§ but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

Bailments of Pledges.

172. The bailment of goods as security for payment of a debt or performance of a promise is called 'pledge.' The bailor is in this case called the 'pawnor.' The bailee is called the 'pawnee.'

173. The pawnee may retain the goods pledged, not only for payment of the debt, or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

174. The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

* Story, *Bailments*, § 121a.

† *New York Civil Code*, § 943.

‡ Whether belonging to the bailor or not.

§ As such.

1872.
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175. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Pawnee's right as to extraordinary expenses incurred.

176. If the pawnor makes default in payment of the debt, or performance, at the stipulated time, of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

Pawnee's right where pawnor makes default.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

177. If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

Default in pawnor's right to redeem.

178. A person who is in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods or documents: Provided that the pawnee acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly:

Pledge by possessor of goods or of documentary title to goods.

Provided also that such goods or documents have not been obtained from their lawful owner, or from any person in lawful custody of them, by means of an offence of fraud.*

179. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Pledge where pawnor has only a limited interest.

Suits by Bailees or Bailors against Wrong-doers.

180. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Suit by bailor or bailee against wrong-doer.

181. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

Apportionment of relief or compensation obtained by such suits.

CHAPTER X.—AGENCY.

Appointment and Authority of Agents.

182. An 'agent' is a person employed to do any act for another,† or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the 'principal.'

defined.

* See 5 & 6 Vic., c. 39, ss. 1 and 3.

† Cf. s. 225, *infra*. As to the effect of an agent's fraud, see ss. 17 and 238.

1872. **183.** Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind,
Act 9. Who may employ agent. may employ an agent.*

184. As between the principal and third persons, any person may become an agent; but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

Consideration not necessary. **185.** No consideration is necessary to create an agency.

Agent's authority may be expressed or implied. **186.** The authority of an agent may be expressed or implied.

187. An authority is said to be express when it is given by words Definitions of express and spoken or written. An authority is said to be implied authority. implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Illustration.

A owns a shop in Scrampur, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

188. An agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

Illustrations.

(a.) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(b.) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the purpose of carrying on the business.

189. An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence in his own case under similar circumstances.†

Illustrations.

(a.) An agent for sale may have goods repaired if it be necessary.

(b.) A consigns provisions to B at Calcutta, with directions to send them immediately to C at Katak. B may sell the provisions at Calcutta, if they will not bear the journey to Katak without spoiling.

Sub-Agents.

190. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed.

* Cf. s. 11, *supra*.

† But see s. 214, *infra*.

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191. A 'sub-agent' is a person employed by, and acting under the control of, the original agent in the business of the agency.

192. Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by, and responsible for, his acts as if he were an agent originally appointed by the principal.

Representation of principal by sub-agent properly appointed.

The agent is responsible to the principal for the acts of the sub-agent.

The sub-agent is responsible for his acts to the agent, but not to the principal, except in cases of fraud or wilful wrong.

Sub-agent's responsibility.

193. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons; the principal is not represented by or responsible for the acts of the person so employed,* nor is that person responsible to the principal.

Agent's responsibility for sub-agent appointed without authority.

194. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent, of the principal for such part of the business of the agency as is entrusted to him.

Relation between principal and person duly appointed by agent to act in business of agency.

Illustrations.

(a) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

(b) A authorizes B, a merchant in Calcutta, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is solicitor for A.

195. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Agent's duty in naming such person.

Illustrations.

(a.) A instructs B, a merchant, to buy a ship for him. B employs a ship-surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently, and the ship turns out to be unseaworthy, and is lost. B is not, but the surveyor is, responsible to A.

(b.) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

Ratification.

196. Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

Right of person as to acts done for him without his authority.

Effect of ratification.

* Unless, of course, he ratifies them, see s. 196, *infra*.

† i. e., lawful acts.

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197. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Ratification may be expressed or implied.

Illustrations.

(a.) A, without authority, buys goods for B. Afterwards B sells them to C on his own account. B's conduct implies a ratification of the purchase made for him by A.

(b.) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan.

Knowledge requisite to valid ratification.

198. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Effect of ratifying unauthorized act forming part of a transaction.

199. A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

200. An act done by one person on behalf of another without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Ratification of unauthorized act cannot injure third person.

Illustrations.

(a.) A, not being authorized thereto by B, demands, on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

(b.) A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

Revocation of Authority.

201. An agency is terminated by the principal revoking his authority ; or by the agent renouncing the business of the agency ; or by the business of the agency being completed ; or by either the principal or agent dying or becoming of unsound mind ; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

Termination of agency.

202. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Termination of agency where agent has an interest in subject-matter.

Illustrations.

(a.) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(b.) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

203. The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

When principal may revoke agent's authority.

When principal may revoke agent's authority.

204. The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.

Illustrations.

(a.) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(b.) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

205. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation* to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

206. Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

207. Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

Illustration.

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

208. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

Illustrations.

(a.) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(b.) A, at Madras, by letter, directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Madras. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

(c.) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but, before hearing of it, pays the money to C. The payment is good as against D, the executor.

209. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Agent's duty on termination of agency by principal's death or insanity.

* See s. 73, *supra*.

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210. The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

Agent's Duty to Principal.

211. An agent is bound to conduct the business of his principal according to the directions given by the principal,* or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

Illustrations.

(a.) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. A must make good to B the interest usually obtained by such investments.

(b.) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

212. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill, or misconduct.

Illustrations.

(a.) A, a merchant in Calcutta, has an agent, B, in London, to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as, e.g., by variation of rate of exchange—but not further.

(b.) A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(c.) A, an insurance-broker employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

(d.) A, a merchant in England, directs B, his agent at Bombay, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Agent's accounts.

213. An agent is bound to render proper accounts to his principal on demand.

* But see s. 189, *supra*.

214. It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.*

Agent's duty to communicate with principal.

215. If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal, and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case show either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Right of principal when agent deals on his own account in business of agency without principal's consent.

Illustrations.

(a.) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(b.) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

216. If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Principal's right to benefit gained by agent dealing on his own account in business of agency.

Illustration.

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

217. An agent may retain,† out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Agent's right of retainer out of sums received on principal's account.

Agent's duty to pay sums received for principal.

218. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

219. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

When agent's remuneration becomes due.

220. An agent, who is guilty of misconduct in the business of the agency,‡ is not entitled to any remuneration in respect of that part of the business which he has misconducted.

Agent not entitled to remuneration for business misconducted.

* See s. 189, *supra*.

† See s. 221, *infra*.

‡ See ss. 195, 211, 212, 213, 214, 218, *supra*.

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Illustrations.

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(a.) A employs B to recover 1,00,000 rupees from C, and to lay it out on good security. B recovers the 1,00,000 rupees, and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security which he ought to have known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(b.) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

221. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property, whether Agent's lien on principal's property. moveable or immovable, or the principal received by him, until the amount due to himself for commission, disbursements, and services in respect of the same, has been paid or accounted for to him.*

Principal's Duty to Agent.

222. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.
Agent to be indemnified against consequences of lawful acts.

Illustrations.

(a.) B, at Singápur, under instructions from A, of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs, and expenses.

(b.) B, a broker at Calcutta, by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B.† B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs, and expenses.

223. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.
Agent to be indemnified against consequences of acts done in good faith.

Illustrations.

(a.) A, a decree-holder, and entitled to execution of B's goods, requires the officer of the Court to seize certain goods, representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay to C in consequence of obeying A's directions.

(b.) B, at the request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B, and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C, and for B's own expenses.

* As to the general lien of an agent who is a banker, factor, attorney, or policy-broker, see s. 171, *supra*.

† It must be assumed that the disclosed principal could not be sued, see s. 230, *infra*.

224. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise to indemnify him against the consequences of that act.*

Illustrations.

(a.) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

(b.) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequence of the publication, and all costs and damages of any action in respect thereof. B is sued by C, and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

Compensation to agent for injury caused by principal's neglect.

225. The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

Illustration.

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskillfully put up, and B is in consequence hurt. A must make compensation to B.

Effect of Agency on Contracts with third Persons.

226. Contracts entered into through an agent, and obligations arising

Enforcement and consequences of agent's contracts. from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.

Illustrations.

(a.) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set-off against that claim a debt due to himself from A.

(b.) A, being B's agent, with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

227. When an agent does more than he is authorized to do, and when

Principal how far bound, the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority, is binding as between him and his principal.

Illustration.

A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

228. Where an agent does more than he is authorized to do, and what

Principal not bound when excess of agent's authority is not separable. he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

Illustration.

A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

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229. Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Consequences of notice to agent.

Illustrations.

(a.) A is employed by B to buy from C certain goods, of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set-off a debt owing to him from C against the price of the goods.

(b.) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set-off against the price of the goods a debt owing to him from C.

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.

230. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary.

Such a contract shall be presumed to exist in the following cases:—

(1.) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad:

(2.) Where the agent does not disclose the name of his principal:

(3.) Where the principal, though disclosed, cannot be sued.

231. If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

Rights of parties to a contract made by agent not disclosed.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

232. Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

Performance of contract with agent supposed to be principal.

Illustration.

A, who owes 500 rupees to B, sells 1,000 rupees' worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set-off A's debt.

233. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Right of person dealing with agent personally liable.

Illustration.

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

234. When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.

235. A person untruly* representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

Liability of pretended agent.

236. A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it, if he was in reality acting, not as agent, but on his own account.

Person falsely contracting as agent, not entitled to performance.

237. When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations, if he has, by his words or conduct, induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

Liability of principal inducing belief that agent's unauthorized acts were authorized.

Illustrations.

(a.) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(b.) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

238. Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principal;† but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

Effect, on agreement, of misrepresentation or fraud by agent.

Illustrations.

(a.) A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.

(b.) A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignee.

CHAPTER XI.—OF PARTNERSHIP.

239. 'Partnership' is the relation which subsists between persons who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them.‡

'Partnership' defined.

* See s. 208, *supra*.

† See s. 250, *infra*.

‡ This would apply to members of joint-stock companies: but the law applicable to them is saved by s. 266, *infra*.

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'Firm' defined.

Persons who have entered into partnership with one another are called collectively a 'firm.'

Illustrations.

(a.) A and B buy 100 bales of cotton, which they agree to sell for their joint account. A and B are partners in respect of such cotton.

(b.) A and B buy 100 bales of cotton, agreeing to share it between them. A and B are not partners.

(c.) A agrees with B, a goldsmith, to buy and furnish gold to B, to be worked up by him and sold, and that they shall share in the resulting profit or loss. A and B are partners.

(d.) A and B agree to work together as carpenters, but that A shall receive all profits and shall pay wages to B. A and B are not partners.

(e.) A and B are joint owners of a ship. This circumstance does not make them partners.

240. A loan to a person engaged or about to engage in any trade or

Lender not a partner by advancing money for share of profits.

undertaking, upon a contract with such person that the lender shall receive interest at a rate varying with the profits, or that he shall receive a share of the profits, does not, of itself, constitute the lender a partner, or render him responsible as such.*

241. In the absence of any contract to the contrary, property left

Property left in business by retiring partner, or deceased partner's representative.

by a retiring partner, or the representative of a deceased partner, to be used in the business, is to be considered a loan within the meaning of the last preceding section.

242. No contract for the remuneration of a servant or agent of any

Servant or agent remunerated by share of profits, not a partner.

person, engaged in any trade or undertaking, by a share of the profits of such trade or undertaking, shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

243. No person, being a widow or child of a deceased partner of a

Widow or child of deceased partner receiving annuity out of profits, not a partner.

trader, and receiving, by way of annuity, a proportion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him.

244. No person receiving, by way of annuity or otherwise, a portion

Person receiving portion of profits for sale of good-will, not a partner.

of the profits of any business, in consideration of the sale by him of the good-will of such business, shall, by reason only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities.†

245. A person who has, by words spoken or written, or by his conduct,

Responsibility of person leading another to believe him a partner.

led another to believe that he is a partner in a particular firm, is responsible to him as a partner in such firm.

246. Any one consenting to allow himself to be represented as a partner

Liability of person permitting himself to be represented as a partner.

is liable, as such, to third persons who, on the faith thereof, give credit to the partnership.‡

* See *Molloy March v. Court of Wards*, 10 B. L. R. 312.

‡ See Act I. of 1872, s. 109.

† 28 & 29 Vic., c. 86.

1872.
Act 9.

247. A person who is under the age of majority according to the law to which he is subject,* may be admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm.

248. A person who has been admitted to the benefits of partnership under the age of majority† becomes, on attaining that age, liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice, within a reasonable time, of his repudiation of the partnership.

249. Every partner is liable for all debts and obligations incurred while he is a partner in the usual course of business by or on behalf of the partnership; but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such firm for any thing done before he became a partner.

250. Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm.

251. Each partner, who does any act necessary for, or usually done in, carrying on the business of such a partnership as that of which he is a member, binds his co-partners to the same extent as if he were their agent duly appointed for that purpose.

Exception.—If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement.

Illustrations.

(a.) A and B trade in partnership, A residing in England, and B in India. A draws a bill of exchange in the name of the firm. B has no notice of the bill, nor is he at all interested in the transaction. The firm is liable on the bill, provided the holder did not know of the circumstances under which the bill was drawn.

(b.) A, being one of a firm of solicitors and attorneys, draws a bill of exchange in the name of the firm without authority. The other partners are not liable on the bill.

(c.) A and B carry on business in partnership as bankers. A sum of money is received by A on behalf of the firm. A does not inform B of such receipt, and afterwards A appropriates the money to his own use. The partnership is liable to make good the money.

(d.) A and B are partners. A, with the intention of cheating B, goes to a shop and purchases articles on behalf of the firm, such as might be used in the ordinary course of the partnership business, and converts them to his own separate use, there being no collusion between him and the seller. The firm is liable for the price of the goods.

252. Where partners have by contract regulated and defined, as between themselves, their rights and obligations, such contract can be annulled or altered only by consent of all† of them, which consent must either be expressed or be implied from a uniform course of dealing.

* See Act I. of 1872, s. 109.

† See Act IX. of 1875.

‡ Cf. s. 253, cl. 5, *infra*.

1872.

Illustration.

Act 9. A, B, and C, intending to enter into partnership, execute written articles of agreement, by which it is stipulated that the nett profits arising from the partnership business shall be equally divided between them. Afterwards they carry on the partnership business for many years, A receiving one-half of the nett-profits, and the other half being divided equally between B and C. All parties know of and acquiesce in this arrangement. This course of dealing supersedes the provision in the articles as to the division of profits.

Rules determining partner's mutual relations, where no contract to contrary.

253. In the absence of any contract to the contrary, the relations of partners to each other are determined by the following rules:—

(1.) All partners are joint owners of all property originally brought into the partnership stock, or bought with money belonging to the partnership, or acquired for purposes of the partnership business. All such property is called partnership property. The share of each partner in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss:

(2.) All partners are entitled to share equally in the profits of the partnership business, and must contribute equally towards the losses sustained by the partnership:

(3.) Each partner has a right to take part in the management of the partnership business:

(4.) Each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business:

(5.) When differences arise as to ordinary matters connected with the partnership business, the decision shall be according to the opinion of the majority of the partners; but no change in the nature of the business of the partnership can be made, except with the consent of all the partners:*

(6.) No person can introduce a new partner into a firm without the consent of all the partners:

(7.) If, from any cause whatsoever, any member of the partnership ceases to be so, the partnership is dissolved as between all the other members:

(8.) Unless the partnership has been entered into for a fixed term, any partner may retire from it at any time:

(9.) Where a partnership has been entered into for a fixed term, no partner can, during such term, retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever, except by order of Court:

(10.) Partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.

When Court may dissolve partnership.

254. At the suit of a partner the Court may dissolve the partnership in the following cases:—

(1.) When a partner becomes of unsound mind:

(2.) When a partner, other than the partner suing, has been adjudicated an insolvent under any law relating to insolvent debtors:

(3.) When a partner, other than the partner suing, has done any act by which the whole interest of such partner is legally transferred to a third person:

(4.) When any partner becomes incapable of performing his part of the partnership contract:

(5.) When a partner, other than the partner suing, is guilty of gross misconduct in the affairs of the partnership or towards his partners : 1872.

(6.) When the business of the partnership can only be carried on at a loss. Act 9.

Dissolution of partnership by prohibition of business.

255. A partnership is in all cases dissolved by its business being prohibited by law.

256. If a partnership, entered into for a fixed term, be continued after such term has expired, the rights and obligations of the partners will, in the absence of any agreement to the contrary, remain the same as they were at the expiration of the term, so far as such rights and obligations can be applied to a partnership dissolvable at the will of any partner.

257. Partners are bound to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

Account to firm of benefit derived from transaction affecting partnership.

258. A partner must account to the firm for any benefit derived from a transaction affecting the partnership.

Illustrations.

(a.) A, B, and C, are partners in trade. C, without the knowledge of A and B, obtains for his own sole benefit a lease of the house in which the partnership business is carried on. A and B are entitled to participate, if they please, in the benefit of the lease.

(b.) A, B, and C, carry on business together in partnership as merchants trading between Bombay and London. D, a merchant in London, to whom they make their consignments, secretly allows C a share of the commission which he receives upon such consignments, in consideration of C's using his influence to obtain the consignments for him. C is liable to account to the firm for the money so received by him.

259. If a partner, without the knowledge and consent of the other partners, carries on any business competing or interfering with that of the firm, he must account to the firm for all profits made in such business, and must make compensation to the firm for any loss occasioned thereby.

260. A continuing guarantee, given either to a firm or to a third person in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or in respect of the transactions of which, such guarantee was given.*

Non-liability of deceased partner's estate for subsequent obligations.

261. The estate of a partner who has died is not, in the absence of an express agreement, liable in respect of any obligation incurred by the firm after his death.

262. Where there are joint debts due from the partnership, and also separate debts due from any partner, the partnership property must be applied in the first instance in payment of the debts of the firm ; and if there is any surplus, then the

1872. share of each partner must be applied in payment of his separate debts, or paid to him. The separate property of any partner must be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

Act 9.

Continuance of partner's rights and obligations after dissolution.

263. After a dissolution of partnership, the rights and obligations of the partners continue in all things necessary for winding-up the business of the partnership.

264. Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given, unless they themselves had notice of such dissolution.

265. In the absence of any contract to the contrary after the termination of a partnership, each partner or his representatives may apply to the Court to wind-up the business of the firm, to provide for the payment of its debts, and to distribute the surplus according to the shares of the partners respectively.

Explanation.—The Court in this section means a Court not inferior to the Court of a District Judge within the local limits of whose jurisdiction the place or principal place of business of the firm is situated.

Limited liability partnerships, incorporated partnerships, and joint-stock companies.

266. Extraordinary partnerships, such as partnerships with limited liability, incorporated partnerships, and joint-stock companies, shall be regulated by the law for the time being in force relating thereto.

SCHEDULE—ENACTMENTS REPEALED.

Statutes.

No. and year of Statute.	TITLE.	Extent of repeal.
Stat. 29 Car. II., cap. 3.	An Act for the prevention of Frauds and Perjuries.	Sections 1, 2, 3, 4, and 17.
Stat. 11 & 12 Vic., cap. 21.	To consolidate and amend the law relating to insolvent debtors in India.	Section 42.

SCHEDULE—ENACTMENTS REPEALED (*continued*).

Acts.

No. and year of Act.	TITLE.	Extent of repeal.
Act XIII. of 1840 ...	An Act for the amendment of the law regarding factors, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat. 4 Geo. IV., c. 83, as altered and amended by the Stat. 6 Geo. IV., c. 94.	The whole.
Act XIV. of 1840 ...	An Act for rendering a written memorandum necessary to the validity of certain promises and engagements, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat. 9 Geo. IV., c. 14.	The whole.
Act XX. of 1844 ...	An Act to amend the law relating to Advances <i>bonâ fide</i> made to Agents intrusted with goods, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat. 5 & 6 Vic., c. 39, as altered by this Act.	The whole.
Act XXI. of 1848 ...	An Act for avoiding Wagers ...	The whole.
Act V. of 1866 ...	An Act to provide a summary procedure on bills of exchange, and to amend in certain respects the commercial law of British India.	Sections 9 & 10.
Act XV. of 1866 ...	An Act to amend the law of Partnership in India.	The whole.
Act VIII. of 1867 ...	An Act to amend the law relating to Horse-racing in India.	The whole.

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THE COURT FEES' ACT, NO. VII. OF 1870.

RECEIVED THE G.-G.'S ASSENT ON THE 11TH MARCH 1870.

CHAPTER I.

PRELIMINARY.

- Short title. 1. This Act may be called "The Court Fees' Act, 1870."
- Extent of Act. It extends to the whole of British India ;
- Commencement of Act. And it shall come into force on the first day of April 1870.
2. [*Repealed by Act XIV. of 1870.*]

CHAPTER II.

FEES IN THE HIGH COURTS AND IN THE COURTS OF SMALL CAUSES AT THE PRESIDENCY TOWNS.

3. The fees payable for the time being to the clerks and officers (other than the sheriffs and attorneys) of the High Courts established by Letters Patent, by virtue of the power conferred by Statute twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four, section fifteen, or chargeable in each of such Courts under number eleven of the first, and numbers seven, twelve, fourteen, sixteen, twenty, and twenty-one of the second, schedule to this Act annexed ;
- and the fees for the time being chargeable in the Courts of Small Causes at the Presidency-towns and their several offices ;
- shall be collected in manner hereinafter appearing.
4. No document of any of the kinds specified in the first or second schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited, or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction ;
- or in the exercise of its extraordinary original criminal jurisdiction ;
- or in the exercise of its jurisdiction as regards appeals from the judgment of two or more Judges of the said Court, or of a Division Court ;
- or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence ;
- or in the exercise of its jurisdiction as a Court of reference or revision ;
- ~Fees on documents filed, &c., in High Courts in their extraordinary jurisdiction.
- Levy of fees in Presidency Small Cause Courts.
- In their appellate jurisdiction.
- An Courts of reference and revision.

1870. unless in respect of such document there be paid a fee of an amount
 Act 7. not less than that indicated by either of the said schedules as the proper fee
 for such document.

5. When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter, and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the taxing-officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the First Judge of such Court.

The Chief Justice shall declare who shall be taxing-officer within the meaning of the first paragraph of this section.

CHAPTER III.

FEES IN OTHER COURTS AND IN PUBLIC OFFICES.

6. Except in the Courts hereinbefore mentioned, no document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited, or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

Fees on documents filed,
 &c., in municipal Courts or in
 public offices.

7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

i. In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically)—according to the amount claimed;

ii. In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year;

iii. In suits for moveable property other than money, where the subject-matter has a market-value—according to such value at the date of presenting the plaint;

iv. In suits—
 for moveable property of
 no market-value:

to enforce a right to share
 in joint family property:

(a) for moveable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title,

(b) to enforce the right to share in any property on the ground that it is joint family property,

for a declaratory decree and consequential relief:

for an injunction:

for easements:

for accounts:

(c) to obtain a declaratory decree or order, where consequential relief is prayed,

(d) to obtain an injunction,

(e) for a right to some benefit (not herein otherwise provided for to arise out of land, and

(f) for accounts—

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according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought, and the provisions of the Code of Civil Procedure, section thirty-one, shall apply as if, for the word 'claim,' the words 'relief sought' were substituted.

v. In suits for the possession of land, houses, and gardens—according for possession of land, to the value of the subject-matter; and such value houses, and gardens: shall be deemed to be—

where the subject-matter is land, and—

(a) where the land forms an entire or a definite share of an estate paying annual revenue to Government, or forms part of such an estate, and is recorded in the Collector's register as separately assessed with such revenue, and such revenue is permanently settled—ten times the revenue so payable:

(b) where the land forms an entire estate, or a definite share of an estate paying annual revenue to Government, or forms part of such estate, and is recorded as aforesaid;

and such revenue is settled, but not permanently—

five times the revenue so payable:

(c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue,

and nett profits have arisen from the land during the year next before the date of presenting the plaint—

fifteen times such nett profits:

but where no such nett profits have arisen therefor—the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood:

(d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate, and is not separately assessed as above-mentioned—the market-value of the land:

Provided that, in the territories subject to the Governor of Bombay in Proviso as to Bombay Pre- Council, the value of the land shall be deemed sidency. to be—

(1) where the land is held on settlement for a period not exceeding thirty years, and pays the full assessment to Government—a sum equal to five times the survey-assessment;

(2) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government—a sum equal to ten times the survey-assessment; and

(3) where the whole or any part of the annual survey-assessment is remitted—a sum computed under paragraph (1) or paragraph (2) of this proviso, as the case may be, in addition to ten times the assessment or the portion of assessment so remitted;

Explanation.—The word 'estate,' as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor, or a

1870. farmer or raiyat, shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue:

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(e) where the subject-matter is a house or garden—according to the market-value of the house or garden.

vi. In suits to enforce a right of pre-emption—according to the value to enforce a right of pre-emption: (computed in accordance with paragraph v. of this section) of the land, house, or garden in respect of which the right is claimed:

vii. In suits for the interest of an assignee of land revenue—fifteen times his nett profits as such for the year next before the date of presenting the plaint:

viii. In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached:

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest:

to redeem: ix. In suits against a mortgagee for the recovery of the property mortgaged, and in suits by a mortgagee to foreclose the mortgage,

to foreclose: or, where the mortgage is made by conditional sale, to have the sale declared absolute—

according to the principal money expressed to be secured by the instrument of mortgage:

x. In suits for specific performance—

(a) of a contract of sale—according to the amount of the consideration:

(b) of a contract of mortgage—according to the amount agreed to be secured:

(c) of a contract of lease—according to the aggregate amount of the fine or premium (if any), and of the rent agreed to be paid during the first year of the term;

(d) of an award—according to the amount or value of the property in dispute:

xi. In the following suits between landlord and tenant:

(a) for the delivery by a tenant of the counterpart of a lease,

(b) to enhance the rent of a tenant having a right of occupancy,

(c) for the delivery by a landlord of a lease,

(d) to contest a notice of ejection,

(e) to recover the occupancy of land from which a tenant has been illegally ejected by the landlord, and

(f) for abatement of rent—

according to the amount of the rent of the land to which the suit refers, payable for the year next before the date of presenting the plaint.

8. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation

under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

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9. If the Court sees reason to think that the annual nett profits or the market-value of any such land, house, or garden as is mentioned in section seven, paragraphs five and six, have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person, directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

10. i. If, in the result of any such investigation, the Court finds that the nett profits or market-value have or has been wrongly estimated, the Court, if the estimation has been excessive, may, in its discretion, refund the excess paid as such fee : but if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or nett profits been rightly estimated :

ii. In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed :

iii. Section one hundred and eighty of the Code of Civil Procedure shall be construed as if the words 'the market-value of any property or' were inserted after the word 'ascertaining,' and as if the words 'or annual nett profits' were inserted after the word 'damages.'

11. In suits for mesne-profits, or for immoveable property and mesne-profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid, and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed, shall have been paid to the proper officer.

Where the amount of mesne-profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid, and the fee which would have been payable had the suit comprised the whole of the profits so ascertained, is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

12. i. Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum as the case may be, is filed, and such decision shall be final as between the parties to the suit :

ii. But whenever any such suit comes before a Court of appeal, reference, or revision, if such Court considers that the said question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section ten, paragraph ii., shall apply.

13. If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in section three

1870. hundred and fifty-one of the same Code, for a second decision by the lower
 Act 7. Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal :

Provided that, if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much of the fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

14. Where an application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate, authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.*

15. Where an application for a review of judgment is admitted, and where, on the re-hearing, the Court reverses or modifies its former decision on ground of mistake, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the application* as exceeds the fee payable on any other application to such Court under the second schedule to this Act, No. one, clause (b) or clause (d).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

16. When any appeal is presented to a Civil Court, not against the whole of a decision, but only against so much thereof as relates to a portion of the subject-matter of the suit, and, on the hearing of such appeal, the respondent takes, under Section three hundred and forty-eight of the Code of Civil Procedure, an objection to any part of the said decision other than the part appealed against, the Court shall not hear such objection until the respondent shall have paid the additional fee which would have been payable had the appeal comprised the part of the decision so objected to.

17. Where a suit embraces two or more distinct subjects, the plaintiff or defendant shall be chargeable with the aggregate amount of the fees to which the plaintiffs or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, section nine.

18. When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which police-officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the Code of Criminal Procedure, the complainant shall pay a fee of eight annas, unless the Court thinks fit to remit such payment.

Exemption of certain documents.

19. Nothing contained in this Act shall render the following documents chargeable with any fee :—

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- i. Power-of-attorney to institute or defend a suit when executed by an officer, warrant-officer, non-commissioned officer, or private of Her Majesty's army not in civil employment.
- ii. Declarations mentioned in section one hundred and eighteen and section one hundred and sixty-four of the Code of Civil Procedure.
- iii. Written statements called for by the Court after the first hearing of a suit.
- iv. Plaint presented to a Military Court of Requests and petition for execution of a decree of such Court.
- v. Plaints in suits tried by Village Munsifs in the Presidency of Fort St. George.
- vi. Plaints and processes in suits before District Pancháyats in the same Presidency.
- vii. Plaints in suits before Collectors under Madras Regulation XII. of 1816.
- viii. Probate of a will, letters of administration, and certificate mentioned in the first schedule to this Act annexed, number twelve, where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one thousand rupees.
- ix. Application or petition to a Collector or other officer making a settlement of land-revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.
- x. Application relating to a supply for irrigation of water belonging to Government.
- xi. Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land-revenue by a person holding, under direct engagement with Government, land of which the revenue is settled, but not permanently.
- xii. Application for service of notice of relinquishment of land or of enhancement of rent.
- xiii. Written authority to an agent to distrain.
- xiv. First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document, or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.
- xv. Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.
- xvi. Petition, application, charge, or information respecting any offence, when presented, made, or laid to or before a police-officer, or to or before the heads of villages or the village-police in the territories respectively subject to the Governors in Council of Madras and Bombay.

1870. xvii. Petition by a prisoner, or other person in duress or under restraint of any Court or its officers.
- Act 7. xviii. Complaint of a public servant (as defined in the Indian Penal Code), a municipal officer, or servant of a Railway Company.
- xix. Application for permission to cut timber in Government forests, or otherwise relating to such forests.
- xx. Application for the payment of money due by Government to the applicant.
- xxi. Petition of appeal against the *chaukidari* assessment under Act No. XX. of 1856, or against any municipal tax.
- xxii. Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes.
- xxiii. Petitions presented to the Special Commissioner appointed under Bengal Act No. II. of 1869 (*to ascertain, regulate, and record certain tenures in Chutia Nagpur*).
- xxiv. Petitions under the* Indian Christian Marriage Act, 1872, sections forty-five and forty-eight.

CHAPTER IIIA.†

PROBATES, LETTERS OF ADMINISTRATION, AND CERTIFICATES OF ADMINISTRATION.

- 19A. Where any person, on applying for the probate of a will or letters of administration, has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a Court-fee thereon, if within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue Authority of the province in which the probate or letters has or have been granted, and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation, and if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required, the said Authority may—
- (a) cancel the stamp on the probate or letters, if such stamp has not been already cancelled;
 - (b) substitute another stamp for denoting the Court-fee which should have been paid thereon; and
 - (c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

- 19B. Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount of value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less Court-fee to be paid on the probate or letters of administration granted in respect of such estate, than has been actually paid thereon under this Act,

* See Act XV. of 1872, s. 2.

† This chapter has been inserted by Act XIII. of 1875, s. 6.

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such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances.

19C. Whenever such a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate;

When such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

19D. The probate of the will, or the letters of administration of the effects, of any person deceased, heretofore or hereafter granted, shall be deemed valid and available by his executors or administrators for recovering, transferring, or assigning any moveable or immoveable property whereof or whereto the deceased was possessed or entitled, either wholly or partially, as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a Court-fee was paid on such probate or letters of administration.

19E. Where any person, on applying for probate or letters of administration, has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a Court-fee thereon, the Chief Controlling Revenue Authority of the province in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full Court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of five times, or if it or they is or are produced after one year from such date, of twenty times, such proper Court-fee, without any deduction of the Court-fee originally paid on such probate or letters:

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a Court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper Court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

1870.

Act 7.

19F. In case of letters of administration on which too low a Court-fee has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid, until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof, in case the full value of the estate of the deceased had been then ascertained.

19G. Where too low a Court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not, within six months after the first day of April 1875, or after the discovery of the mistake, or of any effects not known at the time to have belonged to the deceased, apply to the said Authority, and pay what is wanting to make up the Court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees, and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper Court-fee.

19H. The provisions of sections 19A to 19G (both inclusive) shall, *mutatis mutandis*, apply to certificates granted under Act No. XL of 1858 (*for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal*) or Act XX. of 1864 (*for making better provision for the care of the persons and property of Minors in the Presidency of Bombay*) and to the holders of such certificates.

CHAPTER IV.

PROCESS FEES.

Rules as to costs of processes

20. The High Court shall, as soon as may be, make rules as to the following matters:—

- i. the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil and Revenue Courts established within the local limits of such jurisdiction;
- ii. the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which police-officers may arrest without a warrant; and
- iii. the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may, from time to time, alter and add to the rules so made.

All such rules, alterations, and additions, shall, after being confirmed by the Local Government, and sanctioned by the Governor-General of India in Council, be published in the local official Gazette, and shall thereupon have the force of law.

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

21. A Table in the English and Vernacular languages, showing the fee chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

Table of process fees.

1870.
Act 7.

22. Subject to rules to be made by the High Court, and approved by the Local Government and the Governor-General of India in Council,

every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto;

and for the purposes of this section, every Court of Small Causes established under Act No. XI. of 1865 (*to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*) shall be deemed to be subordinate to the Court of the District Judge.

23. Subject to rules to be framed by the Chief Controlling Revenue Authority, and approved by the Local Government and the Governor-General of India in Council, every officer performing the functions of a Collector of a District shall fix, and, may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

24. Every process served or executed under this chapter shall be held to be a process within the meaning of section one hundred and eighty-eight of the Code of Civil Procedure, and of section two of Act No. XXIII. of 1861 (*to amend Act VIII. of 1859*).

CHAPTER V.

OF THE MODE OF LEVYING FEES.

Collection of fees by stamps.

25. All fees referred to in section three, or chargeable under this Act, shall be collected by stamps.

26. The stamps used to denote any fee chargeable under this Act shall be impressed or adhesive, or partly impressed and partly adhesive, as the Governor-General of India in Council may, by notification in the *Gazette of India*, from time to time direct.

Rules for supply, number, renewal, and keeping accounts of stamps.

27. The Local Government may, from time to time, make rules for regulating—

- (a) the supply of stamps to be used under this Act,
- (b) the number of stamps to be used for denoting any fee chargeable under this Act,
- (c) the renewal of damaged or spoiled stamps, and
- (d) the keeping accounts of all stamps used under this Act:

Provided that, in the case of stamps used under section three in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

28. No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

Stamping documents inadvertently received.

1870.

Act 7.

But if any such document is, through mistake or inadvertence, received, filed, or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

29. Where any such document is amended in order merely to correct a mistake, and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

30. No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

CHAPTER VI.

MISCELLANEOUS.

31. i. Whenever an application or petition containing a complaint or charge of an offence, other than an offence for which police-officers may arrest without warrant, is presented to a Criminal Court, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee paid on such application or petition.

ii. In the case mentioned in section eighteen, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee, if any, paid by the latter for the examination.

iii. When the complainant has paid fees for serving processes in either of the cases mentioned in the first and second paragraphs of this section, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay such fees to the complainant.

iv. All fees ordered to be repaid under this section may be recovered as if they were fines imposed by the Court.

32. The Code of Civil Procedure, sections three hundred and eight and three hundred and nine, shall be read as if, for the words 'stamp-duty' and 'stamp,' the words and figures 'fees chargeable under the Court-Fees' Act, 1870,' were substituted; section three hundred and seventy-one of the same Code shall be read as if, for the words 'a stamp of the value,' the words 'the payment of the fee' were substituted; and section three hundred and seventy-three of the same Code shall be read as if, for the words 'on a stamp paper of the value,' the words 'and shall be chargeable with the fee' were substituted; and as if for the words 'for the stamps,' the words 'the fees' were substituted.*

1870.

Act 7.

33. Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in section four or section six shall be deemed to prohibit such filing or exhibition.

34. In the General Stamp Act, 1869, section forty-eight shall be read as if, for the words and figures 'Act No. XXVI. of 1867 (*to amend the law relating to Stamp Duties*),' the words and figures 'The Court Fees' Act, 1870,' were substituted.

35. The Governor-General of India in Council may, from time to time, by notification in the *Gazette of India*, reduce or remit, in the whole or in any part of British India, all or any of the fees mentioned in the first and second schedules to this Act annexed,

and may, in like manner, cancel or vary such order. *

36. Nothing in Chapters II. and V. of this Act applies to the commission payable to the Accountant-General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary.

COURT FEES.

SCHEDULE I.

Ad valorem fees.

NUMBER.	PROPER FEE.
1. Plaint or memorandum of appeal (not otherwise provided for in this Act), presented to any Civil or Revenue Court, except those mentioned in section three.*	When the amount or value of the subject-matter in dispute does not exceed five rupees... ..
	Six annas.
	When such amount or value exceeds five rupees, For every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees.
	Six annas.
	When such amount or value exceeds one hundred rupees, For every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees
	Twelve annas.
	When such amount or value exceeds one thousand rupees, For every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees
	Five rupees.
	When such amount or value exceeds five thousand rupees, For every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees.
	Ten rupees.
	When such amount or value exceeds ten thousand rupees, For every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees
	Fifteen rupees.
	When such amount or value exceeds twenty thousand rupees, For every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees
	Twenty rupees.
	When such amount or value exceeds thirty thousand rupees, For every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.
	Twenty rupees.
	When such amount or value exceeds fifty thousand rupees, For every five thousand rupees, or part thereof, in excess of fifty thousand rupees
	Twenty-five rupees.
Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees.	

* To ascertain the proper fee leviable on the institution of a suit, see the Table annexed to this schedule.

SCHEDULE I.—(continued).

Ad valorem fees

NUMBER.		PROPER FEE.
2. <i>Plaint in a suit for possession under Act No. XIV. of 1859 (to provide for the limitation of suits), section fifteen.</i>	...	A fee of one-half the amount prescribed in the foregoing scale.
3. <i>[Repealed by Act No. VIII. of 1871.]</i>	...	
4. <i>Application for review of judgment, if presented on or after the ninetieth day from the date of the decree.</i>	...	The fee leviable on the plaint or memorandum of appeal.
5. <i>Application for review of judgment if presented before the ninetieth day from the date of the decree.</i>	...	
6. <i>Copy or translation of a judgment or order not being, or having the force of, a decree.</i>	When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or office, or by any other Judicial or Executive Authority— (a.)—If the amount or value of the subject-matter is fifty or less than fifty rupees ... (b.)—If such amount or value exceeds fifty rupees ... When such judgment or order is passed by a High Court ...	Four annas. Eight annas. One rupee.
7. <i>Copy of a decree or order having the force of a decree.</i>	When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court— (a.)—If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees... (b.)—If such amount or value exceeds fifty rupees ... When such decree or order is made by a High Court ...	Eight annas. One rupee. Four rupees.
8. <i>Copy of any document liable to stamp-duty under the General Stamp Act, 1869, when left by any party to a suit, or proceeding in place of the original withdrawn.</i>	(a.)—When the stamp-duty chargeable on the original does not exceed eight annas ... (b.)—In any other case ...	The amount of the duty chargeable on the original. Eight annas.

SCHEDULE I.—(continued).

Ad valorem fees.

NUMBER.		PROPER FEE.
9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report, or the like, taken out of any Civil or Criminal or Revenue Court or office, or from the office of any chief officer charged with the executive administration of a Division.	For every three hundred and sixty words or fraction of three hundred and sixty words	Eight annas.
10. Certificate of administration granted under Act No. XL. of 1858 (for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal), or under Act No. XX. of 1864 (for making better provision for the care of the persons and property of minors in the Presidency of Bombay)	If the amount or value of the property in respect to which such certificate is granted does not exceed five hundred rupees	Five rupees.
	If such amount or value exceeds five hundred rupees, but not one thousand rupees	Ten rupees.
11. Probate of a will or letters of administration with or without will annexed.	And for every one thousand rupees, or part thereof, in excess of one thousand rupees	Five rupees.
12. Certificate granted under Act No. XXVII. of 1860 (for facilitating the collection of debts on successions and for the security of parties paying debts to the representatives of deceased persons), or under Bombay Regulation VIII. of 1827 (to provide for the formal recognition of Heirs, Executors, and Administrators, and for the appointment of Administrators and Managers of Property by the Courts).	If the amount or value of the property* in respect of which the probate or letters or certificate shall be granted exceeds one thousand rupees.	Two per centum on such amount or value; "provided that, when after a certificate has been granted as aforesaid in respect of any estate, probate or letters of administration is or are granted in respect of the same estate, the fee payable in respect of such latter grant shall be reduced by the amount of the fee paid in respect of the former grant."†
	Note.—The person to whom any such certificate is granted, or his representative, shall, after the expiration of twelve months from the date of such certificate, and thereafter whenever the Court granting such certificate requires him so to do, file a statement on oath of all monies recovered or realized by him under such certificate.	

* i.e., property of or to which the deceased was possessed or entitled.—*In the goods of George*, 6 B. L. R. App. 138

† The words quoted have been added by Act V. of 1881 (Probate and Administration), s. 153.

SCHEDULE I;—(continued).

Ad valorem fees.

NUMBER.		PROPER FEE.
	<p>If the monies so recovered or realized exceed the amount of debts or other property as sworn to by the person to whom the certificate is granted, the Court may cancel the same, and order such person to take out a fresh certificate, and pay the fee prescribed by this schedule for such excess.</p> <p>In default of filing such statement within the time allowed, the Court may cancel the certificate.*</p>	

* That the certificate liable to cancellation remains in force until cancelled, see 6 Mad. H. C. R. 135.

SCHEDULE I.—(continued).

Table of rates of ad valorem fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
0	5	0 6 0
5	10	0 12 0
10	15	1 2 0
15	20	1 8 0
20	25	1 14 0
25	30	2 4 0
30	35	2 10 0
35	40	3 0 0
40	45	3 6 0
45	50	3 12 0
50	55	4 2 0
55	60	4 8 0
60	65	4 14 0
65	70	5 4 0
70	75	5 10 0
75	80	6 0 0
80	85	6 6 0
85	90	6 12 0
90	95	7 2 0
95	100	7 8 0
100	110	8 4 0
110	120	9 0 0
120	130	9 12 0
130	140	10 8 0
140	150	11 4 0
150	160	12 0 0
160	170	12 12 0
170	180	13 8 0
180	190	14 4 0
190	200	15 0 0
200	210	15 12 0
210	220	16 8 0
220	230	17 4 0
230	240	18 0 0
240	250	18 12 0
250	260	19 8 0
260	270	20 4 0
270	280	21 0 0
280	290	21 12 0
290	300	22 8 0
300	310	23 4 0
310	320	24 0 0
320	330	24 12 0
330	340	25 8 0

SCHEDULE I:—(continued).

Table of rates of ad valorem fees, &c.—(continued).

When the amount or value of the subject matter exceeds	But does not exceed	Proper Fee.		
Rs.	Rs.	Rs.	A.	P.
340	350	26	4	0
350	360	27	0	0
360	370	27	12	0
370	380	28	8	0
380	390	29	4	0
390	400	30	0	0
400	410	30	12	0
410	420	31	8	0
420	430	32	4	0
430	440	33	0	0
440	450	33	12	0
450	460	34	8	0
460	470	35	4	0
470	480	36	0	0
480	490	36	12	0
490	500	37	8	0
500	510	38	4	0
510	520	39	0	0
520	530	39	12	0
530	540	40	8	0
540	550	41	4	0
550	560	42	0	0
560	570	42	12	0
570	580	43	8	0
580	590	44	4	0
590	600	45	0	0
600	610	45	12	0
610	620	46	8	0
620	630	47	4	0
630	640	48	0	0
640	650	48	12	0
650	660	49	8	0
660	670	50	4	0
670	680	51	0	0
680	690	51	12	0
690	700	52	8	0
700	710	53	4	0
710	720	54	0	0
720	730	54	12	0
730	740	55	8	0
740	750	56	4	0
750	760	57	0	0
760	770	57	12	0
770	780	58	8	0

COURT FEES.

SCHEDULE I.—(continued).

Table of rates of ad valorem fees, &c.—(continued).

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.		
Rs.	Rs.	Rs.	A.	P.
780	790	59	4	0
790	800	60	0	0
800	810	60	12	0
810	820	61	8	0
820	830	62	4	0
830	840	63	0	0
840	850	63	12	0
850	860	64	8	0
860	870	65	4	0
870	880	66	0	0
880	890	66	12	0
890	900	67	8	0
900	910	68	4	0
910	920	69	0	0
920	930	69	12	0
930	940	70	8	0
940	950	71	4	0
950	960	72	0	0
960	970	72	12	0
970	980	73	8	0
980	990	74	4	0
990	1,000	75	0	0
1,000	1,100	80	0	0
1,100	1,200	85	0	0
1,200	1,300	90	0	0
1,300	1,400	95	0	0
1,400	1,500	100	0	0
1,500	1,600	105	0	0
1,600	1,700	110	0	0
1,700	1,800	115	0	0
1,800	1,900	120	0	0
1,900	2,000	125	0	0
2,000	2,100	130	0	0
2,100	2,200	135	0	0
2,200	2,300	140	0	0
2,300	2,400	145	0	0
2,400	2,500	150	0	0
2,500	2,600	155	0	0
2,600	2,700	160	0	0
2,700	2,800	165	0	0
2,800	2,900	170	0	0
2,900	3,000	175	0	0
3,000	3,100	180	0	0
3,100	3,200	185	0	0

SCHEDULE I.—(continued).

Table of rates of ad valorem fees, &c.—(continued).

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.		
Rs.	Rs.	Rs.	A.	P.
3,200	3,300	190	0	0
3,300	3,400	195	0	0
3,400	3,500	200	0	0
3,500	3,600	205	0	0
3,600	3,700	210	0	0
3,700	3,800	215	0	0
3,800	3,900	220	0	0
3,900	4,000	225	0	0
4,000	4,100	230	0	0
4,100	4,200	235	0	0
4,200	4,300	240	0	0
4,300	4,400	245	0	0
4,400	4,500	250	0	0
4,500	4,600	255	0	0
4,600	4,700	260	0	0
4,700	4,800	265	0	0
4,800	4,900	270	0	0
4,900	5,000	275	0	0
5,000	5,250	285	0	0
5,250	5,500	295	0	0
5,500	5,750	305	0	0
5,750	6,000	315	0	0
6,000	6,250	325	0	0
6,250	6,500	335	0	0
6,500	6,750	345	0	0
6,750	7,000	355	0	0
7,000	7,250	365	0	0
7,250	7,500	375	0	0
7,500	7,750	385	0	0
7,750	8,000	395	0	0
8,000	8,250	405	0	0
8,250	8,500	415	0	0
8,500	8,750	425	0	0
8,750	9,000	435	0	0
9,000	9,250	445	0	0
9,250	9,500	455	0	0
9,500	9,750	465	0	0
9,750	10,000	475	0	0
10,000	10,500	490	0	0
10,500	11,000	505	0	0
11,000	11,500	520	0	0
11,500	12,000	535	0	0
12,000	12,500	550	0	0
12,500	13,000	565	0	0

SCHEDULE I.—(continued).

Table of rates of ad valorem fees, &c.—(continued).

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.		
Rs.	Rs.	Rs.	A.	P.
13,000	13,500	580	0	0
13,500	14,000	595	0	0
14,000	14,500	610	0	0
14,500	15,000	625	0	0
15,000	15,500	640	0	0
15,500	16,000	655	0	0
16,000	16,500	670	0	0
16,500	17,000	685	0	0
17,000	17,500	700	0	0
17,500	18,000	715	0	0
18,000	18,500	730	0	0
18,500	19,000	745	0	0
19,000	19,500	760	0	0
19,500	20,000	775	0	0
20,000	21,000	795	0	0
21,000	22,000	815	0	0
22,000	23,000	835	0	0
23,000	24,000	855	0	0
24,000	25,000	875	0	0
25,000	26,000	895	0	0
26,000	27,000	915	0	0
27,000	28,000	935	0	0
28,000	29,000	955	0	0
29,000	30,000	975	0	0
30,000	32,000	995	0	0
32,000	34,000	1,015	0	0
34,000	36,000	1,035	0	0
36,000	38,000	1,055	0	0
38,000	40,000	1,075	0	0
40,000	42,000	1,095	0	0
42,000	44,000	1,115	0	0
44,000	46,000	1,135	0	0
46,000	48,000	1,155	0	0
48,000	50,000	1,175	0	0
50,000	55,000	1,200	0	0
55,000	60,000	1,225	0	0
60,000	65,000	1,250	0	0
65,000	70,000	1,275	0	0
70,000	75,000	1,300	0	0
75,000	80,000	1,325	0	0
80,000	85,000	1,350	0	0
85,000	90,000	1,375	0	0
90,000	95,000	1,400	0	0
95,000	1,00,000	1,425	0	0

SCHEDULE I.—(continued).

Table of rates of ad valorem fees, &c.—(continued).

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.		
Ra.	Ra.	Ra.	A.	P.
1,00,000	1,05,000	1,450	0	0
1,05,000	1,10,000	1,475	0	0
1,10,000	1,15,000	1,500	0	0
1,15,000	1,20,000	1,525	0	0
1,20,000	1,25,000	1,550	0	0
1,25,000	1,30,000	1,575	0	0
1,30,000	1,35,000	1,600	0	0
1,35,000	1,40,000	1,625	0	0
1,40,000	1,45,000	1,650	0	0
1,45,000	1,50,000	1,675	0	0
1,50,000	1,55,000	1,700	0	0
1,55,000	1,60,000	1,725	0	0
1,60,000	1,65,000	1,750	0	0
1,65,000	1,70,000	1,775	0	0
1,70,000	1,75,000	1,800	0	0
1,75,000	1,80,000	1,825	0	0
1,80,000	1,85,000	1,850	0	0
1,85,000	1,90,000	1,875	0	0
1,90,000	1,95,000	1,900	0	0
1,95,000	2,00,000	1,925	0	0
2,00,000	2,05,000	1,950	0	0
2,05,000	2,10,000	1,975	0	0
2,10,000	2,15,000	2,000	0	0
2,15,000	2,20,000	2,025	0	0
2,20,000	2,25,000	2,050	0	0
2,25,000	2,30,000	2,075	0	0
2,30,000	2,35,000	2,100	0	0
2,35,000	2,40,000	2,125	0	0
2,40,000	2,45,000	2,150	0	0
2,45,000	2,50,000	2,175	0	0
2,50,000	2,55,000	2,200	0	0
2,55,000	2,60,000	2,225	0	0
2,60,000	2,65,000	2,250	0	0
2,65,000	2,70,000	2,275	0	0
2,70,000	2,75,000	2,300	0	0
2,75,000	2,80,000	2,325	0	0
2,80,000	2,85,000	2,350	0	0
2,85,000	2,90,000	2,375	0	0
2,90,000	2,95,000	2,400	0	0
2,95,000	3,00,000	2,425	0	0
3,00,000	3,05,000	2,450	0	0
3,05,000	3,10,000	2,475	0	0
3,10,000	3,15,000	2,500	0	0
3,15,000	3,20,000	2,525	0	0

SCHEDULE I.—(continued).

Table of rates of ad valorem fees, &c.—(continued).

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.		
Rs.	Rs.	Rs.	A.	P.
3,20,000	3,25,000	2,550	0	0
3,25,000	3,30,000	2,575	0	0
3,30,000	3,35,000	2,600	0	0
3,35,000	3,40,000	2,625	0	0
3,40,000	3,45,000	2,650	0	0
3,45,000	3,50,000	2,675	0	0
3,50,000	3,55,000	2,700	0	0
3,55,000	3,60,000	2,725	0	0
3,60,000	3,65,000	2,750	0	0
3,65,000	3,70,000	2,775	0	0
3,70,000	3,75,000	2,800	0	0
3,75,000	3,80,000	2,825	0	0
3,80,000	3,85,000	2,850	0	0
3,85,000	3,90,000	2,875	0	0
3,90,000	3,95,000	2,900	0	0
3,95,000	4,00,000	2,925	0	0
4,00,000	4,05,000	2,950	0	0
4,05,000	4,10,000	2,975	0	0
4,10,000	.....	3,000	0	0

SCHEDULE II.

Fixed Fees.

NUMBER.		PROPER FEE.
1. Application* or petition..	<p>(a.)—When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings ;</p> <p>or when presented to any officer of land revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application of petition relates exclusively to such engagement ;</p> <p>or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement ;</p> <p>or when presented to any Civil Court† other than a principal Civil Court of original jurisdiction, or to any Cantonment Magistrate sitting as a Court of Civil Judicature under Act No. III. of 1859, or to any Court of Small Causes constituted under Act No. XI. of 1865, or under Act No. XVI. of 1868, section twenty, or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees ;</p> <p>or when presented to any Civil, Criminal, or Revenue Court, or to any Board or Executive Officer for the purpose of obtaining a copy or translation of any judgment, decree, or order passed by such Court, Board, or Officer, or of any other document‡ on record in such Court or Office.</p>	One anna.

* In writing, 2 N.-W. P. 418. † 7 Bom. A. C. J.²109. ‡ 6 B. L. R., App. 137.

SCHEDULE II.—(continued).

Fixed Fees.

NUMBER.	PROPER FEE.
1. Application or petition—	
(b.)—When containing a complaint or charge of any offence other than an offence for which police-officers may, under the Criminal Procedure Code, arrest without warrant, and presented to any Criminal Court ; or when presented to a Civil, Criminal, or Revenue Court, or to a Collector, or any revenue officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act ; or to deposit in Court revenue or rent ; or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.	Eight annas.
(c.)—When presented to a Chief Commissioner or other chief controlling revenue or executive authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a Division, and not otherwise provided for by this Act	One rupee.
(d.)—When presented to a High Court	Two rupees.
2. Application for leave to sue as a pauper	Eight annas.
3. Application for leave to appeal as a pauper	
(a.)—When presented to a District Court	One rupee.
(b.)—When presented to a Commissioner or a High Court	Two rupees.
4. <i>Plaint or memorandum of appeal in a suit to obtain possession under Act No XVI. of 1838, or Bombay Act No. V. of 1864 (to give Māmlat-dārs' Courts jurisdiction in certain cases to maintain existing possession or to restore possession to any party dispossessed otherwise than by course of law.)</i> }	Eight annas.

SCHEDULE II.—(continued).

Fixed Fees.

NUMBER.		PROPER FEE.
5. Complaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.		
6. Bail-bond or other instrument of obligation not otherwise provided for by this Act, when given by the direction of any Court or executive authority.	... ..	Eight annas.
7. Undertaking under section forty-nine of the Indian Divorce Act.		
8. Petition of objection to assessment under the Indian Income Tax Act.		
9. Petition of appeal under the Indian Income Tax Act ... ..	... ..	One rupee.
10. Mukhtárnámah or Vakálatnámah.	When presented for the conduct of any one case—	
	(a.)—to any Civil or Criminal Court other than a High Court, or to any Revenue Court, or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (b) and (c) of this Number	Eight annas.
	(b.)—to a Commissioner of Revenue, Circuit, or Customs, or to any officer charged with the executive administration of a Division, not being the chief revenue or executive authority	One rupee.
	(c.)—to a High Court, Chief Commissioner, Board of Revenue, or other chief controlling revenue or executive authority	Two rupees.
11. Memorandum of appeal when the appeal is not from an order rejecting a plaint or from a decree or an order having the force of a decree, and is presented—	(a.)—to any Civil Court other than a High Court, or to any Revenue Court, or executive officer other than the High Court, or chief controlling revenue or executive authority	Eight annas.

SCHEDULE II.—(continued.)

Fixed Fees.

NUMBER.	PROPER FEE.
Memorandum, &c.—(contd.)	(b.) to a High Court or Chief Commissioner, or other chief controlling executive or revenue authority Two rupees.
12. Caveat.	
13. Application under 'Act No. X. of 1859, section twenty six, or Bengal Act No. VI. of 1862, section nine, or Bengal Act No. VIII. of 1869, section seven.'	... .. Five rupees.
14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866.	
15. Complaint or memorandum of appeal in a suit to obtain possession of a wife.	
16. Administration-bond.	... .. Eight rupees.
17. Complaint or memorandum of appeal in each of the following suits :—	
i. to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court :	
ii. to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates :	
iii. to obtain a declaratory decree where no consequential relief is prayed :†	
iv. to set aside an award :	
v. to set aside an adoption.	... .. Ten rupees.
vi. every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act.	
18. Application under section three hundred and twenty-six of the Code of Civil Procedure.	
19. Agreement under section three hundred and twenty-eight of the same Code.	

SCHEDULE II (concluded).

Fixed Fees.

NUMBER.	PROPER FEE.				
20. Every petition under the Indian Divorce Act, except petitions under section forty-four of the same Act, and every memorandum of appeal under section fifty-five of the same Act.	Twenty rupees.
21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865.	

THE INDIAN EASEMENTS ACT, NO. V. OF 1882.

RECEIVED THE G.-G.'s ASSENT ON THE 17TH FEBRUARY 1882.

An Act to define and amend the law relating to Easements and Licenses.

WHEREAS it is expedient to define and amend the law relating to Easements and Licenses; It is hereby enacted as follows :—

PRELIMINARY.

1. This Act may be called "The Indian Easements Act, 1882."

It extends to the territories respectively administered by the Governor of Madras in Council and the Chief Commissioners of the Central Provinces and Coorg ;

and it shall come into force on the first day of July, 1882.

2. Nothing herein contained shall be deemed to affect any law not heretofore repealed ; or to derogate from—

(a) any right of the Government to regulate the collection, retention, and distribution of the water of rivers and streams flowing in natural channels, and of natural lakes and ponds, or of the water flowing, collected, retained, or distributed in or by any channel or other work constructed at the public expense for irrigation ;

(b) any customary or other right (not being a license) in or over immoveable property which the Government, the public, or any person may possess irrespective of other immoveable property ; or

(c) any right acquired, or arising out of a relation created, before this Act comes into force.

3. Sections 26 and 27 of the Indian Limitation Act, 1877, and the definition of "easement," contained in that Act, are repealed in the territories to which this Act extends. All references in any Act or Regulation to the said sections, or to sections 27 and 28 of Act No. IX. of 1871, shall, in such territories, be read as made to sections fifteen and sixteen of this Act.

CHAPTER I.—OF EASEMENTS GENERALLY.

4. An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in, or upon, or in respect of, certain other land not his own.

1882.

Act 5.

The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

Explanation.—In the first and second clauses of this section, the expression “land” includes also things permanently attached to the earth; the expression “beneficial enjoyment” includes also possible convenience, remote advantage, and even a mere amenity; and the expression “to do something” includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage, or anything growing or subsisting thereon.

Illustrations.

(a.) A, as the owner of a certain house, has a right of way thither over his neighbour B's land for purposes connected with the beneficial enjoyment of the house. This is an easement.

(b.) A, as the owner of a certain house, has the right to go on his neighbour B's land, and to take water for the purposes of his household out of a spring therein. This is an easement.

(c.) A, as the owner of a certain house, has the right to conduct water from B's stream to supply the fountains in the garden attached to the house. This is an easement.

(d.) A, as the owner of a certain house and farm, has the right to graze a certain number of his own cattle on B's field, or to take, for the purpose of being used in the house, by himself, his family, guests, lodgers, and servants, water or fish out of C's tank, or timber out of D's wood, or to use, for the purpose of manuring his land, the leaves which have fallen from the trees on E's land. These are easements.

(e.) A dedicates to the public the right to occupy the surface of certain land for the purpose of passing and re-passing. This right is not an easement.

(f.) A is bound to cleanse a watercourse running through his land, and keep it free from obstruction for the benefit of B, a lower riparian owner. This is not an easement.

Continuous and discontinuous, apparent and non-apparent, easements.

5. Easements are either continuous or discontinuous, apparent or non-apparent.

A continuous easement is one whose enjoyment is, or may be, continual without the act of man.

A discontinuous easement is one that needs the act of man for its enjoyment.

An apparent easement is one the existence of which is shown by some permanent sign which, upon careful inspection by a competent person, would be visible to him.

A non-apparent easement is one that has no such sign.

Illustrations.

(a.) A right annexed to B's house to receive light by the windows without obstruction by his neighbour A. This is a continuous easement.

(b.) A right of way annexed to A's house over B's land. This is a discontinuous easement.

(c.) Rights annexed to A's land to lead water thither across B's land by an aqueduct, and to draw off water thence by a drain. The drain would be discovered upon careful inspection by a person conversant with such matters. These are apparent easements.

(d.) A right annexed to A's house to prevent B from building on his own land. This is a non-apparent easement.

6. An easement may be permanent, or for a term of years or other limited period, or subject to periodical interruption, or exercisable only at a certain place, or at certain times, or between certain hours, or for a particular purpose, or on condition that it shall commence or become void or voidable on the happening of a specified event or the performance or non-performance of a specified act.

Easements restrictive of certain rights.

7. Easements are restrictions of one or other of the following rights (namely):—

(a.) The exclusive right of every owner of immoveable property (subject to any law for the time being in force) to enjoy and dispose of the same and all products thereof and accessions thereto.

Exclusive right to enjoy.

(b.) The right of every owner of immoveable property (subject to any law for the time being in force) to enjoy without disturbance by another the natural advantages arising from its situation.

Rights to advantages arising from situation.

Illustrations of the Rights above referred to.

(a.) The exclusive right of every owner of land in a town to build on such land, subject to any municipal law for the time being in force.

(b.) The right of every owner of land that the air passing thereto shall not be unreasonably polluted by other persons.

(c.) The right of every owner of a house that his physical comfort shall not be interfered with materially and unreasonably by noise or vibration caused by any other person.

(d.) The right of every owner of land to so much light and air as pass vertically thereto.

(e.) The right of every owner of land that such land, in its natural condition; shall have the support naturally rendered by the subjacent and adjacent soil of another person.

Explanation.—Land is in its natural condition when it is not excavated and not subjected to artificial pressure; and the “subjacent and adjacent soil” mentioned in this illustration means such soil only as in its natural condition would support the dominant heritage in its natural condition.

(f.) The right of every owner of land that, within his own limits, the water which naturally passes or percolates by, over, or through his land, shall not, before so passing or percolating, be unreasonably polluted by other persons.

(g.) The right of every owner of land to collect and dispose within his own limits of all water under the land which does not pass in a defined channel, and all water on its surface which does not pass in a defined channel.

(h.) The right of every owner of land that the water of every natural stream which passes by, through, or over his land in a defined natural channel shall be allowed by other persons to flow within such owner's limits without interruption and without material alteration in quantity, direction, force, or temperature; the right of every owner of land abutting on a natural lake or pond into or out of which a natural stream flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner's limits without material alteration in quantity or temperature.

(i.) The right of every owner of upper land that water naturally rising in, or falling on, such land, and not passing in defined channels, shall be allowed by the owner of adjacent lower land to run naturally thereto.

(j.) The right of every owner of land abutting on a natural stream, lake, or pond to use and consume its water for drinking, household purposes, and watering his cattle and sheep; and the right of every such owner to use and consume the water for irrigating such land, and for the purposes of any manufactory situate thereon, provided that he does not thereby cause material injury to other like owners.

Explanation.—A natural stream is a stream, whether permanent or intermittent, tidal or tideless, on the surface of land or underground, which flows by the operation of nature only, and in a natural and known course.

1882.

CHAPTER II.

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THE IMPOSITION, ACQUISITION, AND TRANSFER OF EASEMENTS.

8. An easement may be imposed by any one in the circumstances, and to the extent, in and to which he may transfer his interest in the heritage on which the liability is to be imposed.

Who may impose easements.

Illustrations.

(a.) A is tenant of B's land under a lease for an unexpired term of twenty years, and has power to transfer his interest under the lease. A may impose an easement on the land to continue during the time that the lease exists or for any shorter period.

(b.) A is tenant for his life of certain land with remainder to B absolutely. A cannot, unless with B's consent, impose an easement thereon which will continue after the determination of his life-interest.

(c.) A, B, and C are co-owners of certain land. A cannot, without the consent of B and C, impose an easement on the land or on any part thereof.

(d.) A and B are lessees of the same lessor, A of a field X for a term of five years, and B of a field Y for a term of ten years. A's interest under his lease is transferable; B's is not. A may impose on X, in favour of B, a right of way terminable with A's lease.

9. Subject to the provisions of section eight, a servient owner may impose on the servient heritage any easement that does not lessen the utility of the existing easement. But he cannot, without the consent of the dominant owner, impose an easement on the servient heritage which would lessen such utility.

Servient owners.

Illustrations.

(a.) A has, in respect of his mill, a right to the uninterrupted flow thereto, from sunrise to noon, of the water of B's stream. B may grant to C the right to divert the water of the stream from noon to sunset: provided that A's supply is not thereby diminished.

(b.) A has, in respect of his house, a right of way over B's land. B may grant to C, as the owner of a neighbouring farm, the right to feed his cattle on the grass growing on the way: provided that A's right of way is not thereby obstructed.

10. Subject to the provisions of section eight, a lessor may impose, on the property leased, any easement that does not derogate from the rights of the lessee as such, and a mortgagor may impose, on the property mortgaged, any easement that does not render the security insufficient. But a lessor or mortgagor cannot, without the consent of the lessee or mortgagee, impose any other easement on such property, unless it be to take effect on the termination of the lease or the redemption of the mortgage.

Lessor and mortgagor.

Explanation.—A security is insufficient within the meaning of the section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

11. No lessee or other person having a derivative interest may impose on the property held by him as such an easement to take effect after the expiration of his own interest, or in derogation of the right of the lessor or the superior proprietor.

Lessee.

12. An easement may be acquired by the owner of the immoveable property for the beneficial enjoyment of which the right is created, or on his behalf, by any person in possession of the same.

Who may acquire easements.

One of two or more co-owners of immoveable property may, as such, with or without the consent of the other or others, acquire an easement for the beneficial enjoyment of such property. 1882.
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No lessee of immoveable property can acquire, for the beneficial enjoyment of other immoveable property of his own, an easement in or over the property comprised in his lease.

Easements of necessity and *quasi* easements. 13. Where one person transfers or bequeaths immoveable property to another,—

(a) if an easement in other immoveable property of the transferor or testator is necessary for enjoying the subject of the transfer or bequest, the transferee or legatee shall be entitled to such easement; or

(b) if such an easement is apparent and continuous, and necessary for enjoying the said subject as it was enjoyed when the transfer or bequest took effect, the transferee or legatee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement;

(c) if an easement in the subject of the transfer or bequest is necessary for enjoying other immoveable property of the transferor or testator, the transferor or the legal representative of the testator shall be entitled to such easement; or

(d) if such an easement is apparent and continuous, and necessary for enjoying the said property as it was enjoyed when the transfer or bequest took effect, the transferor, or the legal representative of the testator, shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

Where a partition is made of the joint property of several persons,—

(e) if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement; or

(f) if such an easement is apparent and continuous, and necessary for enjoying the share of the latter as it was enjoyed when the partition took effect, he shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

The easements mentioned in this section, clauses (a), (c), and (e), are called easements of necessity.

Where immoveable property passes by operation of law, the persons from and to whom it so passes are, for the purpose of this section, to be deemed, respectively, the transferor and transferee.

Illustrations.

(a.) A sells B a field then used for agricultural purposes only. It is inaccessible except by passing over A's adjoining land or by trespassing on the land of a stranger. B is entitled to a right of way, for agricultural purposes only, over A's adjoining land to the field sold.

(b.) A, the owner of two fields, sells one to B, and retains the other. The field retained was at the date of the sale used for agricultural purposes only, and is inaccessible except by passing over the field sold to B. A is entitled to a right of way, for agricultural purpose only, over B's field to the field retained.

(c.) A sells B a house with windows overlooking A's land, which A retains. The light which passes over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. B is entitled to the light, and A cannot afterwards obstruct it by building on his land.

(d.) A sells B a house with windows overlooking A's land. The light passing over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. Afterwards A sells the land to C. Here C cannot obstruct the light by building on the land, for he takes it subject to the burdens to which it was subject in A's hands.

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(e) A is the owner of a house and adjoining land. The house has windows overlooking the land. A simultaneously sells the house to B, and the land to C. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. Here A impliedly grants B a right to the light, and C takes the land subject to the restriction that he may not build so as to obstruct such light.

(f.) A is the owner of a house and adjoining land. The house has windows overlooking the land. A, retaining the house, sells the land to B, without expressly reserving any easement. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. A is entitled to the light, and B cannot build on the land so as to obstruct such light.

(g.) A, the owner of a house, sells B a factory built on adjoining land. B is entitled, as against A, to pollute the air, when necessary, with smoke and vapours from the factory.

(h.) A, the owner of two adjoining houses, Y and Z, sells Y to B, and retains Z. B is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Y as it was enjoyed when the sale took effect, and A is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Z as it was enjoyed when the sale took effect.

(i.) A, the owner of two adjoining buildings, sells one to B, retaining the other. B is entitled to a right to lateral support from A's building, and A is entitled to a right to lateral support from B's building.

(j.) A, the owner of two adjoining buildings, sells one to B, and the other to C. C is entitled to lateral support from B's building, and B is entitled to lateral support from C's building.

(k.) A grants lands to B for the purpose of building a house thereon. B is entitled to such amount of lateral and subjacent support from A's land as is necessary for the safety of the house.

(l.) Under the Land Acquisition Act, 1870, a Railway Company compulsorily acquires a portion of B's land for the purpose of making a siding. The Company is entitled to such amount of lateral support from B's adjoining land as is essential for the safety of the siding.

(m.) Owing to the partition of joint property, A becomes the owner of an upper room in a building, and B becomes the owner of the portion of the building immediately beneath it. A is entitled to such amount of vertical support from B's portion as is essential for the safety of the upper room.

(n.) A lets a house and grounds to B for a particular business. B has no access to them other than by crossing A's land. B is entitled to a right of way over that land suitable to the business to be carried on by B in the house and grounds.

14. When right to a way of necessity is created under section thirteen,

Direction of way of necessity. the transferor, the legal representative of the testator, or the owner of the share over which the right is exercised, as the case may be, is entitled to set out the way; but it must be reasonably convenient for the dominant owner.

When the person so entitled to set out the way refuses or neglects to do so, the dominant owner may set it out.

15. Where the access and use of light or air to and for any building

Acquisition by prescription. have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years,

and where support from one person's land, or things affixed thereto, has been peaceably received by another person's land subjected to artificial pressure, or by things affixed thereto, as an easement, without interruption, and for twenty years,

and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, support, or other easement, shall be absolute.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested. 1882.
Act 5.

Explanation I.—Nothing is an enjoyment within the meaning of this section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.

Explanation II.—Nothing is an interruption within the meaning of this section unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Explanation III.—Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section.

Explanation IV.—In the case of an easement to pollute water, the said period of twenty years begins when the pollution first prejudices perceptibly the servient heritage.

When the property over which a right is claimed under this section belongs to Government, this section shall be read as if, for the words "twenty years," the words "sixty years," were substituted.

Illustrations.

(a.) A suit is brought in 1883 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption, from 1st January, 1862, to 1st January, 1882. The plaintiff is entitled to judgment.

(b.) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that for a year of that time the plaintiff was entitled to possession of the servient heritage as lessee thereof, and enjoyed the right as such lessee. The suit shall be dismissed, for the right of way has not been enjoyed "as an easement" for twenty years.

(c.) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had admitted that the user was not of right, and asked his leave to enjoy the right. The suit shall be dismissed, for the right of way has not been enjoyed "as of right" for twenty years.

16. Provided that, when any land upon, over, or from which any easement has been enjoyed or derived, has been held by a person as a versioner of servient heritage, under or by virtue of any interest for life, or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land.

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years O had a life-interest in the land; that on C's death B became entitled to the land; and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

1882.

Act 5.

Rights which cannot be acquired by prescription.

17. Easements acquired under section fifteen are said to be acquired by prescription, and are called prescriptive rights.

None of the following rights can be so acquired :—

(a) a right which would tend to the total destruction of the subject of the right, or the property on which, if the acquisition were made, liability would be imposed ;

(b) a right to the free passage of light or air to an open space of ground ;

(c) a right to surface-water not flowing in a stream, and not permanently collected in a pool, tank, or otherwise ;

(d) a right to underground water not passing in a defined channel.

Customary easements.

18. An easement may be acquired in virtue of a local custom. Such easements are called customary easements.

Illustrations.

(a.) By the custom of a certain village every cultivator of village land is entitled, as such, to graze his cattle on the common pasture. A having become the tenant of a plot of uncultivated land in the village breaks up and cultivates that plot. He thereby acquires an easement to graze his cattle in accordance with the custom.

(b.) By the custom of a certain town no owner or occupier of a house can open a new window therein so as substantially to invade his neighbour's privacy. A builds a house in the town near B's house. A thereupon acquires an easement that B shall not open new windows in his house so as to command a view of the portions of A's house which are ordinarily excluded from observation, and B acquires a like easement with respect to A's house.

19. Where the dominant heritage is transferred or devolves, by act of parties, or by operation of law, the transfer or devolution shall, unless a contrary intention appears, be deemed to pass the easement to the person in whose favour the transfer or devolution takes place.

Transfer of dominant heritage passes easement.

Illustration.

A has certain land to which a right of way is annexed. A lets the land to B for twenty years. The right of way vests in B and his legal representative so long as the lease continues.

CHAPTER III.

THE INCIDENTS OF EASEMENTS.

20. The rules contained in this chapter are controlled by any contract between the dominant and servient owners relating to the servient heritage, and by the provisions of the instrument or decree (if any) by which the easement referred to was imposed.

And when any incident of any customary easement is inconsistent with such rules, nothing in this chapter shall affect such incident.

Bar to use unconnected with enjoyment.

21. An easement must not be used for any purpose not connected with the enjoyment of the dominant heritage.

Illustrations.

(a.) A, as owner of a farm Y, has a right of way over B's land to Y. Lying beyond Y, A has another farm Z, the beneficial enjoyment of which is not necessary for the beneficial enjoyment of Y. He must not use the easement for the purpose of passing to and from Z.

1882.
Act 5.

(b) A, as owner of a certain house, has a right of way to and from it. For the purpose of passing to and from the house, the right may be used, not only by A, but by the members of his family, his guests, lodgers, servants, workmen, visitors, and customers; for this is a purpose connected with the enjoyment of the dominant heritage. So, if A lets the house, he may use the right of way for the purpose of collecting the rent and seeing that the house is kept in repair.

22. The dominant owner must exercise his right in the mode which is

Exercise of easement.

least onerous to the servient owner; and when the exercise of an easement can, without detriment to the dominant owner, be confined to a determinate part of the servient heritage, such exercise shall, at the request of the servient owner, be so confined.

Confinement of exercise of easement.

Illustrations.

(a) A has a right of way over B's field. A must enter the way at either end, and not at any intermediate point.

(b.) A has a right annexed to his house to cut thatching-grass in B's swamp. A, when exercising his easement, must cut the grass so that the plants may not be destroyed.

23. Subject to the provisions of section twenty-two, the dominant owner

Right to alter mode of enjoyment. may, from time to time, alter the mode and place of enjoying the easement, provided that he does not thereby impose any additional burden on the servient heritage.

Exception.—The dominant owner of a right of way cannot vary his line of passage at pleasure, even though he does not thereby impose any additional burden on the servient heritage.

Illustrations.

(a.) A, the owner of a saw-mill, has a right to a flow of water sufficient to work the mill. He may convert the saw-mill into a corn-mill, provided that it can be worked by the same amount of water.

(b.) A has a right to discharge on B's land the rain-water from the eaves of A's house. This does not entitle A to advance his eaves if, by so doing, he imposes a greater burden on B's land.

(c.) A, as the owner of a paper-mill, acquires a right to pollute a stream by pouring in the refuse-liquor produced by making in the mill paper from rags. He may pollute the stream by pouring in similar liquor produced by making in the mill paper by a new process from bamboos, provided that he does not substantially increase the amount, or injuriously change the nature, of the pollution.

(d.) A, a riparian owner, acquires, as against the lower riparian owners, a prescriptive right to pollute a stream by throwing saw-dust into it. This does not entitle A to pollute the stream by discharging into it poisonous liquor.

24. The dominant owner is entitled, as against the servient owner, to do

Right to do acts to secure enjoyment. all acts necessary to secure the full enjoyment of the easement; but such acts must be done at such time and in such manner as, without detriment to the dominant owner, to cause the servient owner as little inconvenience as possible; and the dominant owner must repair, as far as practicable, the damage (if any) caused by the act to the servient heritage.

Accessory rights.

Rights to do acts necessary to secure the full enjoyment of an easement are called accessory rights.

Illustrations.

(a.) A has an easement to lay pipes in B's land to convey water to A's cistern. A may enter and dig the land in order to mend the pipes, but he must restore the surface to its original state.

1882.

Act 5.

(b.) A has an easement of a drain through B's land. The sewer with which the drain communicates is altered. A may enter upon B's land and alter the drain to adapt it to the new sewer, provided that he does not thereby impose any additional burden on B's land.

(c.) A, as owner of a certain house, has a right of way over B's land. The way is out of repair, or a tree is blown down and falls across it. A may enter on B's land and repair the way or remove the tree from it.

(d.) A, as owner of a certain field, has a right of way over B's land. B renders the way impassable. A may deviate from the way and pass over the adjoining land of B, provided that the deviation is reasonable.

(e.) A, as owner of a certain house, has a right of way over B's field. A may remove rocks to make the way.

(f.) A has an easement of support from B's wall. The wall gives way. A may enter upon B's land and repair the wall.

(g.) A has an easement to have his land flooded by means of a dam in B's stream. The dam is half swept away by an inundation. A may enter upon B's land and repair the dam.

25. The expenses incurred in constructing works, or making repairs, or doing any other act necessary for the use or preservation of an easement, must be defrayed by the dominant owner.

26. Where an easement is enjoyed by means of an artificial work, the dominant owner is liable to make compensation for any damage to the servient heritage arising from the want of repair of such work.

27. The servient owner is not bound to do anything for the benefit of the dominant heritage, and he is entitled, as against the dominant owner, to use the servient heritage in any way consistent with the enjoyment of the easement; but he must not do any act tending to restrict the easement or to render its exercise less convenient.

Illustrations.

(a.) A, as owner of a house, has a right to lead water and send sewage through B's land. B is not bound as servient owner to clear the watercourse or scour the sewer.

(b.) A grants a right of way through his land to B as owner of a field. A may feed his cattle on grass growing on the way, provided that B's right of way is not thereby obstructed; but he must not build a wall at the end of his land so as to prevent B from going beyond it, nor must he narrow the way so as to render the exercise of the right less easy than it was at the date of the grant.

(c.) A, in respect of his house, is entitled to an easement of support from B's wall. B is not bound as servient owner to keep the wall standing and in repair. But he must not pull down or weaken the wall so as to make it incapable of rendering the necessary support.

(d.) A, in respect of his mill, is entitled to a watercourse through B's land. B must not drive stakes so as to obstruct the watercourse.

(e.) A, in respect of his house, is entitled to a certain quantity of light passing over B's land. B must not plant trees so as to obstruct the passage to A's windows of that quantity of light.

28. With respect to the extent of easements and the mode of their enjoyment, the following provisions shall take effect:

Extent of easements.

Easement of necessity.

An easement of necessity is co-extensive with the necessity as it existed when the easement was imposed.

The extent of any other easement and the mode of its enjoyment must be fixed with reference to the probable intention of the parties, and the purpose for which the right was imposed or acquired.

Other easements.

In the absence of evidence as to such intention and purpose—

(a) a right of way of any one kind does not include a right of way of any other kind:

Right of way.

(b) the extent of a right to the passage of light or air to a certain window, door, or other opening imposed by a testamentary or non-testamentary instrument, is the quantity of light or air that entered the opening at the time the testator died or the non-testamentary instrument was made:

Right to light or air acquired by grant.

(c) the extent of a prescriptive right to the passage of light or air to a certain window, door, or other opening, is that quantity of light or air which has been accustomed to enter that opening during the whole of the prescriptive period irrespectively of the purposes for which it has been used:

Prescriptive right to light or air.

(d) the extent of a prescriptive right to pollute air or water is the extent of the pollution at the commencement of the period of user on completion of which the right arose: and

Prescriptive right to pollute air and water.

(e) the extent of every other prescriptive right and the mode of its enjoyment must be determined by the accustomed user of the right.

Other prescriptive rights.

29. The dominant owner cannot, by merely altering or adding to the dominant heritage, substantially increase an easement.

Increase of easement.

Where an easement has been granted or bequeathed so that its extent shall be proportionate to the extent of the dominant heritage, if the dominant heritage is increased by alluvion, the easement is proportionately increased, and if the dominant heritage is diminished by diluvion, the easement is proportionately diminished.

Save as aforesaid, no easement is affected by any change in the extent of the dominant or the servient heritage.

Illustrations.

(a.) A, the owner of a mill, has acquired a prescriptive right to divert to his mill part of the water of a stream. A alters the machinery of his mill. He cannot thereby increase his right to divert water.

(b.) A has acquired an easement to pollute a stream by carrying on a manufacture on its banks by which a certain quantity of foul matter is discharged into it. A extends his works, and thereby increases the quantity discharged. He is responsible to the lower riparian owners for injury done by such increase.

(c.) A, as the owner of a farm, has a right to take, for the purpose of manuring his farm, leaves which have fallen from the trees on B's land. A buys a field, and unites it to his farm. A is not thereby entitled to take leaves to manure this field.

30. Where a dominant heritage is divided between two or more persons,

the easement becomes annexed to each of the shares, but not so as to increase substantially the burden on the servient heritage; provided that such annexation is consistent with the terms of the instrument, decree, or revenue proceeding (if any) under which the division was made, and in the case of prescriptive rights, with the user during the prescriptive period.

Partition of dominant heritage.

1882.

Act 5.

Illustrations.

(a) A house to which a right of way by a particular path is annexed is divided into two parts, one of which is granted to A, the other to B. Each is entitled, in respect of his part, to a right of way by the same path.

(b.) A house to which is annexed the right of drawing water from a well to the extent of fifty buckets a day is divided into two distinct heritages, one of which is granted to A, the other to B. A and B are each entitled, in respect of his heritage, to draw from the well fifty buckets a day; but the amount drawn by both must not exceed fifty buckets a day.

(c.) A, having in respect of his house an easement of light, divides the house into three distinct heritages. Each of these continues to have the right to have its windows unobstructed.

31. In the case of excessive user of an easement the servient owner

Obstruction in case of excessive user. may, without prejudice to any other remedies to which he may be entitled, obstruct the user, but only on the servient heritage; provided that such user cannot be obstructed when the obstruction would interfere with the lawful enjoyment of the easement.

Illustration.

A, having a right to the free passage over B's land of light to four windows six feet by four, increases their size and number. It is impossible to obstruct the passage of light to the new windows without also obstructing the passage of light to the ancient windows. B cannot obstruct the excessive user.

CHAPTER IV.

THE DISTURBANCE OF EASEMENTS.

32. The owner or occupier of the dominant heritage is entitled to enjoy

Right to enjoyment without disturbance. the easement without disturbance by any other person.

Illustration.

A, as owner of a house, has a right of way over B's land. C unlawfully enters on B's land, and obstructs A in his right of way. A may sue C for compensation, not for the entry, but for the obstruction.

33. The owner of any interest in the dominant heritage, or the occupier

Suit for disturbance of easement. of such heritage, may institute a suit for compensation for the disturbance of the easement or of any right accessory thereto; provided that the disturbance has actually caused substantial damage to the plaintiff.

Explanation I.—The doing of any act likely to injure the plaintiff by affecting the evidence of the easement, or by materially diminishing the value of the dominant heritage, is substantial damage within the meaning of this section and section thirty-four.

Explanation II.—Where the easement disturbed is a right to the free passage of light passing to the openings in a house, no damage is substantial within the meaning of this section, unless it falls within the first Explanation, or interferes materially with the physical comfort of the plaintiff, or prevents him from carrying on his accustomed business in the dominant heritage as beneficially as he had done previous to instituting the suit.

Explanation III.—Where the easement disturbed is a right to the free passage of air to the openings in a house, damage is substantial within the meaning of this section if it interferes materially with the physical comfort of the plaintiff, though it is not injurious to his health.

Illustrations.

1882.

Act 5.

(a.) A places a permanent obstruction in a path over which B, as tenant of C's house, has a right of way. This is substantial damage to C, for it may affect the evidence of his reversionary right to the easement.

(b.) A, as owner of a house, has a right to walk along one side of B's house. B builds a verandah overhanging the way about ten feet from the ground, and so as not to occasion any inconvenience to foot-passengers using the way. This is not substantial damage to A.

34. The removal of the means of support to which a dominant owner is entitled does not give rise to a right to recover compensation unless and until substantial damage is actually sustained.

When cause of action arises for removal or support.

35. Subject to the provisions of the Specific Relief Act, 1877, sections 52 to 57 (both inclusive), an injunction may be granted to restrain the disturbance of an easement—

Injunction to restrain disturbance.

(a) if the easement is actually disturbed,—when compensation for such disturbance might be recovered under this chapter:

(b) if the disturbance is only threatened or intended,—when the act threatened or intended must necessarily, if performed, disturb the easement.

36. Notwithstanding the provisions of section twenty-four, the dominant owner cannot himself abate a wrongful obstruction of an easement.

Abatement of obstruction of easement.

CHAPTER V.

THE EXTINCTION, SUSPENSION, AND REVIVAL OF EASEMENTS.

37. When, from a cause which preceded the imposition of an easement, the person by whom it was imposed ceases to have any right in the servient heritage, the easement is extinguished.

Extinction by dissolution of right of servient owner.

Exception.—Nothing in this section applies to an easement lawfully imposed by a mortgagor in accordance with section ten.

Illustrations.

(a.) A transfers Sultānpur to B on condition that he does not marry C. B imposes an easement on Sultānpur. Then B marries C. B's interest in Sultānpur ends, and with it the easement is extinguished.

(b.) A, in 1860, let Sultānpur to B for thirty years from the date of the lease. B, in 1861, imposes an easement on the land in favour of C, who enjoys the easement peaceably and openly as an easement without interruption for twenty-nine years. B's interest in Sultānpur then ends, and with it C's easement.

(c.) A and B, tenants of C, have permanent transferable interests in their respective holdings. A imposes on his holding an easement to draw water from a tank for the purpose of irrigating B's land. B enjoys the easement for twenty years. Then A's rent falls into arrear, and his interest is sold. B's easement is extinguished.

(d.) A mortgages Sultānpur to B, and lawfully imposes an easement on the land in favour of C in accordance with the provisions of section ten. The land is sold to D in satisfaction of the mortgage-debt. The easement is not thereby extinguished.

Extinction by release.

38. An easement is extinguished when the dominant owner releases it, expressly or impliedly, to the servient owner.

Such release can be made only in the circumstances and to the extent in and to which the dominant owner can alienate the dominant heritage.

An easement may be released as to part only of the servient heritage.

1882.

Act 5.

Explanation I.—An easement is impliedly released—

(a) where the dominant owner expressly authorizes an act of a permanent nature to be done on the servient heritage, the necessary consequence of which is to prevent his future enjoyment of the easement, and such act is done in pursuance of such authority ;

(b) where any permanent alteration is made in the dominant heritage of such a nature as to show that the dominant owner intended to cease to enjoy the easement in future.

Explanation II.—Mere non-user of an easement is not an implied release within the meaning of this section.

Illustrations.

(a.) A, B, and C are co-owners of a house to which an easement is annexed. A, without the consent of B and C, releases the easement. This release is effectual only as against A and his legal representative.

(b.) A grants B an easement over A's land for the beneficial enjoyment of his house. B assigns the house to C. B then purports to release the easement. The release is ineffectual.

(c.) A, having the right to discharge his eaves-droppings into B's yard, expressly authorizes B to build over this yard to a height which will interfere with the discharge. B builds accordingly. A's easement is extinguished to the extent of the interference.

(d.) A, having an easement of light to a window, builds up that window with bricks and mortar so as to manifest an intention to abandon the easement permanently.

The easement is impliedly released.

(e.) A, having a projecting roof by means of which he enjoys an easement to discharge eaves-droppings on B's land, permanently alters the roof, so as to direct the rain-water into a different channel, and discharge it on C's land. The easement is impliedly released.

39. An easement is extinguished when the servient owner, in exercise of a power reserved in this behalf, revokes the easement.

Extinction by revocation.

40. An easement is extinguished where it has been imposed for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires or the condition is fulfilled.

Extinction on expiration of limited period or happening of dissolving condition.

Extinction on termination of necessity.

41. An easement of necessity is extinguished when the necessity comes to an end.

Illustration.

A grants B a field inaccessible except by passing over A's adjoining land. B afterwards purchases a part of that land over which he can pass to his field. The right of way over A's land which B had acquired is extinguished.

42. An easement is extinguished when it becomes incapable of being at any time and under any circumstances beneficial to the dominant owner.

Extinction of useless easement.

43. Where, by any permanent change in the dominant heritage, the burden on the servient heritage is materially increased, and cannot be reduced by the servient owner without interfering with the lawful enjoyment of the easement, the easement is extinguished, unless—

(a) it was intended for the beneficial enjoyment of the dominant tag, to whatever extent the easement should be used ; or

(b) the injury caused to the servient owner by the change is so slight that no reasonable person would complain of it ; or 1882.

(c) the easement is an easement of necessity. Act 5.

Nothing in this section shall be deemed to apply to an easement entitling the dominant owner to support of the dominant heritage.

44. An easement is extinguished where the servient heritage is by superior force so permanently altered that the dominant owner can no longer enjoy such easement ;

Extinction on permanent alteration of servient heritage by superior force.

Provided that, where a way of necessity is destroyed by superior force, the dominant owner has a right to another way over the servient heritage ; and the provisions of section fourteen apply to such way.

Illustrations.

(a.) A grants to B, as the owner of a certain house, a right to fish in a river running through A's land. The river changes its course permanently, and runs through C's land. B's easement is extinguished.

(b.) Access to a path over which A has a right of way is permanently cut off by an earthquake. A's right is extinguished.

45. An easement is extinguished when either the dominant or the servient heritage is completely destroyed.

Extinction by destruction of either heritage.

Illustration.

A has a right of way over a road running along the foot of a sea-cliff. The road is washed away by a permanent encroachment of the sea. A's easement is extinguished.

46. An easement is extinguished when the same person becomes entitled

to the absolute ownership of the whole of the dominant and servient heritages.

Extinction by unity of ownership.

Illustrations.

(a.) A, as the owner of a house, has a right of way over B's field. A mortgages his house, and B mortgages his field to C. Then C forecloses both mortgages, and becomes thereby absolute owner of both house and field. The right of way is extinguished.

(b.) The dominant owner acquires only part of the servient heritage : the easement is not extinguished, except in the case illustrated in section forty-one.

(c.) The servient owner acquires the dominant heritage in connection with a third person : the easement is not extinguished.

(d.) The separate owners of two separate dominant heritages jointly acquire the heritage which is servient to the two separate heritages : the easements are not extinguished.

(e.) The joint owners of the dominant heritage jointly acquire the servient heritage : the easement is extinguished.

(f.) A single right of way exists over two servient heritages for the beneficial enjoyment of a single dominant heritage. The dominant owner acquires one only of the servient heritages. The easement is not extinguished.

(g.) A has a right of way over B's road. B dedicates the road to the public. A's right of way is not extinguished.

47. A continuous easement is extinguished when it totally ceases to

be enjoyed as such for an unbroken period of twenty years.

A discontinuous easement is extinguished when, for a like period, it has not been enjoyed as such.

Extinction by non-enjoyment.

1882.

Act 5.

Such period shall be reckoned, in the case of a continuous easement, from the day on which its enjoyment was obstructed by the servient owner, or rendered impossible by the dominant owner; and, in the case of a discontinuous easement, from the day on which it was last enjoyed by any person as dominant owner.

Provided that if, in the case of a discontinuous easement, the dominant owner, within such period, registers, under the Indian Registration Act, 1877, a declaration of his intention to retain such easement, it shall not be extinguished until a period of twenty years has elapsed from the date of the registration.

Where an easement can be legally enjoyed only at a certain place, or at certain times, or between certain hours, or for a particular purpose, its enjoyment during the said period at another place, or at other times, or between other hours, or for another purpose, does not prevent its extinction under this section.

The circumstance that, during the said period, no one was in possession of the servient heritage, or that the easement could not be enjoyed, or that a right accessory thereto was enjoyed, or that the dominant owner was not aware of its existence, or that he enjoyed it in ignorance of his right to do so, does not prevent its extinction under this section.

An easement is not extinguished under this section—

(a) where the cessation is in pursuance of a contract between the dominant and servient owners;

(b) where the dominant heritage is held in co-ownership, and one of the co-owners enjoys the easement within the said period, or

(c) where the easement is a necessary easement.

Where several heritages are respectively subject to rights of way for the benefit of a single heritage, and the ways are continuous, such rights shall, for the purposes of this section, be deemed to be a single easement.

Illustration.

A has, as annexed to his house, rights of way from the high road thither over the heritages X and Z and the intervening heritage Y. Before the twenty years expire, A exercises his right of way over X. His rights of way over Y and Z are not extinguished.

48. When an easement is extinguished, the rights (if any) accessory thereto are also extinguished.

Illustration.

A has an easement to draw water from B's well. As accessory thereto, he has a right of way over B's land to and from the well. The easement to draw water is extinguished under section forty-seven. The right of way is also extinguished.

49. An easement is suspended when the dominant owner becomes entitled to possession of the servient heritage for a limited interest therein, or when the servient owner becomes entitled to possession of the dominant heritage for a limited interest therein.

50. The servient owner has no right to require that an easement be continued; and, notwithstanding the provisions of section twenty-six, he is not entitled to compensation for damage caused to the servient heritage in consequence of the extinguishment or suspension of the easement if the dominant owner has given to the servient owner such notice as will enable him, without unreasonable expense, to protect the servient heritage from such damage.

Where such notice has not been given, the servient owner is entitled to compensation for damage caused to the servient heritage in consequence of such extinguishment or suspension.

Compensation for damage caused by extinguishment.

Illustration.

A, in exercise of an easement, diverts to his canal the water of B's stream. The diversion continues for many years, and during that time the bed of the stream partly fills up. A then abandons his easement, and restores the stream to its ancient course. B's land is consequently flooded. B sues A for compensation for the damage caused by the flooding. It is proved that A gave B a month's notice of his intention to abandon the easement, and that such notice was sufficient to enable B, without unreasonable expense, to have prevented the damage. The suit must be dismissed.

51. An easement extinguished under section forty-five revives (a) when the destroyed heritage is, before twenty years have expired, restored by the deposit of alluvion ; (b) when the destroyed heritage is a servient building, and, before twenty years have expired, such building is rebuilt upon the same site ; and (c) when the destroyed heritage is a dominant building, and, before twenty years have expired, such building is rebuilt upon the same site and in such a manner as not to impose a greater burden on the servient heritage.

Revival of easements.

An easement extinguished under section forty-six revives when the grant or bequest by which the unity of ownership was produced is set aside by the decree of a competent Court. A necessary easement extinguished under the same section revives when the unity of ownership ceases from any other cause.

A suspended easement revives if the cause of suspension is removed before the right is extinguished under section forty-seven.

Illustration.

A, as the absolute owner of field Y, has a right of way thither over B's field Z. A obtains from B a lease of Z for twenty years. The easement is suspended so long as A remains lessee of Z. But when A assigns the lease to C, or surrenders it to B, the right of way revives.

CHAPTER VI.

LICENSES.

52. Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immoveable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

"License" defined.

53. A license may be granted by any one in the circumstances and to the extent in and to which he may transfer his interests in the property affected by the license.

Who may grant license.

54. The grant of a license may be express or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a license.

Grant may be express or implied.

1882. **55.** All licenses necessary for the enjoyment of any interest, or the exercise of any right, are implied in the constitution of such interest or right. Such licenses are called accessory licenses.
Act 5. Accessory licenses annexed by law.

Illustration.

A sells the trees growing on his land to B. B is entitled to go on the land and take away the trees.

56. Unless a different intention is expressed or necessarily implied, a license when transferable, license to attend a place of public entertainment may be transferred by the licensee; but, save as aforesaid, a license cannot be transferred by the licensee or exercised by his servants or agents.

Illustrations.

(a.) A grants B a right to walk over A's field whenever he pleases. The right is not annexed to any immovable property of B. The right cannot be transferred.

(b.) The Government grant B a license to erect and use temporary grain-sheds on Government land. In the absence of express provision to the contrary, B's servants may enter on the land for the purpose of erecting sheds, erect the same, deposit grain therein, and remove grain therefrom.

57. The grantor of a license is bound to disclose to the licensee any defect in the property affected by the license likely to be dangerous to the person or property of the licensee, of which the grantor is, and the licensee is not, aware.
 Grantor's duty to disclose defects.

58. The grantor of a license is bound not to do anything likely to render the property affected by the license dangerous to the person or property of the licensee.
 Grantor's duty not to render property unsafe.

59. When the grantor of the license transfers the property affected thereby, the transferee is not as such bound by the license.
 Grantor's transferee not bound by license.

60. A license may be revoked by the grantor, unless—
 License when revocable.

(a) it is coupled with a transfer of property, and such transfer is in force;

(b) the licensee, acting upon the license, has executed a work of a permanent character, and incurred expenses in the execution.

61. The revocation of a license may be express or implied.
 Revocation express or implied.

Illustrations.

(a) A, the owner of a field, grants a license to B to use a path across it. A, with intent to revoke the license, locks a gate across the path. The license is revoked.

(b.) A, the owner of a field, grants a license to B to stack hay on the field. A lets or sells the field to C. The license is revoked.

62. A license is deemed to be revoked—
 License when deemed revoked.

(a) when, from a cause preceding the grant of it, the grantor ceases to have any interest in the property affected by the license;

(b) when the licensee releases it, expressly or impliedly, to the grantor or his representative;

1882.
Act 5.

(c) where it has been granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires, or the condition is fulfilled :

(d) where the property affected by the license is destroyed or by superior force so permanently altered that the licensee can no longer exercise his right :

(e) where the licensee becomes entitled to the absolute ownership of the property affected by the license :

(f) where the license is granted for a specified purpose, and the purpose is attained, or abandoned, or becomes impracticable :

(g) where the license is granted to the licensee as holding a particular office, employment, or character, and such office, employment, or character ceases to exist :

(h) where the license totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract between the grantor and the licensee :

(i) in the case of an accessory license, when the interest or right to which it is accessory ceases to exist.

63. Where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby, and to remove any goods which he has been allowed to place on such property.

64. Where a license has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the license, the right for which he contracted, he is entitled to recover compensation from the grantor.

THE INDIAN EVIDENCE ACT, NO. I. OF 1872.

RECEIVED THE G.-G.'s ASSENT ON THE 15TH MARCH 1872.

WHEREAS it is expedient to consolidate, define, and amend the Law of
Preamble. Evidence ; It is hereby enacted as follows :—

PART I.—RELEVANCY OF FACTS.

CHAPTER 1.—PRELIMINARY.

Short title.

1. This Act may be called "The Indian Evidence Act, 1872 :"

Extent.

It extends to the whole of British India,* and applies to all judicial proceedings in or before any Court, including Courts Martial,† but not to affidavits presented to any Court or officer, nor to proceedings before an arbitrator :

Commencement of Act.

and it shall come into force on the first day of September 1872.

Repeal of enactments.

2. On and from that day the following laws shall be repealed :—

(1) All rules of evidence not contained in any Statute, Act, or Regulation in force in any part of British India :

(2) All such rules, laws, and regulations as have acquired the force of law under the twenty-fifth section of 'The Indian Councils' Act, 1861,' in so far as they relate to any matter herein provided for ; and

(3) The enactments mentioned in the schedule hereto, to the extent specified in the third column of the said schedule.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act, or Regulation in force in any part of British India, and not hereby expressly repealed.

3. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :—

Interpretation-clause.

"Court."

"Court" includes all Judges and Magistrates, and all persons, except arbitrators, legally authorized to take evidence.

* It has been applied to the Maidarabad Assigned Districts and the Cantonment of Sikan-darabad—Foreign Department, No. 803, dated May 2, 1872.

† This is repealed, as to European Courts Martial, by the Mutiny Act : "No Court Martial shall, in respect of the conduct of its proceedings, or the reception or rejection of evidence, be subject to the provisions of the 'Indian Evidence Act, 1872,' or any Act of any Legislature, other than the Parliament of the United Kingdom."—38 Vic., c. 7, s. 101.

1872. "Fact."

"Fact" means and includes—

- Act 1. (1) any thing, state of things, or relation of things, capable of being perceived by the senses ;
 (2) any mental condition of which any person is conscious.

Illustrations.

(a.) That there are certain objects arranged in a certain order in a certain place, is a fact.

(b.) That a man heard or saw something, is a fact.

(c.) That a man said certain words, is a fact.

(d.) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(e.) That a man has a certain reputation, is a fact.

One fact is said to be relevant to another when the one is connected

"Relevant."

with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Facts in issue."

The expression "facts in issue" means and includes—

any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustrations.

A is accused of the murder of B.

At his trial the following facts may be in issue :—

That A caused B's death ;

That A intended to cause B's death ;

That A had received grave and sudden provocation from B ;

That A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

"Document" means any matter expressed or described upon any substance by means of letters, figures, or marks, or

"Document."

by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations.

A writing is a document :

Words printed, lithographed, or photographed, are documents :

A map or plan is a document :

An inscription on a metal plate or stone is a document :

A caricature is a document.

"Evidence."

"Evidence" means and includes—

- (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry ;
 such statements are called oral evidence ;
 (2) all documents produced for the inspection of the Court ;
 such documents are called documentary evidence.

1872.

Act 1.

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

A fact is said not to be proved when it is neither proved nor disproved.

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it:

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved:

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

CHAPTER II.—OF THE RELEVANCY OF FACTS.

5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Evidence may be given of facts in issue and relevant facts.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations.

(a.) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue—

- A's beating B with the club;
- A's causing B's death by such beating;
- A's intention to cause B's death.

(b.) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

6. Facts which, though not in issue, are so connected with a fact in issue

as to form part of the same transaction, are relevant, whether they occurred at the same time and place, or at different times and places.

Illustrations.

(a.) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

1872.

Act 1.

(b.) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(c.) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d.) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

7. Facts which are the occasion, cause, or effect, immediate or other-

Facts which are occasion, cause, or effect of facts in issue, constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

• Illustrations.

(a.) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.

(b.) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(c.) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation, and previous or subsequent conduct.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

• Illustrations.

(a.) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b.) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(c.) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

1872.
Act 1.

(d.) The question is, whether a certain document is the will of A.

The facts that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate, that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(e.) A is accused of a crime.

The facts that, either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f.) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence, 'The police are coming to look for the man who robbed B,' and that immediately afterwards A ran away, are relevant.

(g.) The question is, whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing, 'I advise you not to trust A, for he owes B 10,000 rupees,' and that A went away without making any answer, are relevant facts.

(h.) The question is, whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(i.) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j.) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished, is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or

as corroborative evidence under section 157.

(k.) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed, without making any complaint, is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or

as corroborative evidence under section 157.

9. Facts necessary to explain or introduce a fact in issue or relevant

Facts necessary to explain or introduce relevant facts, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person

whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations.

(a.) The question is, whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(b.) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

1872. The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

Act 1.

(c) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his home, is relevant, under section 8, as conduct subsequent to and affected by facts in issue.

The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(d.) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A, 'I am leaving you because B has made me a better offer.' This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(e.) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says, as he delivers it, 'A says you are to hide this.' B's statement is relevant as explanatory of a fact which is part of the transaction.

(f.) A is tried for a riot, and is proved to have marched at the head of a mob.

The cries of the mob are relevant as explanatory of the nature of the transaction.

10. Where there is reasonable ground to believe that two or more

Things said or done by persons have conspired together to commit an offence or an actionable wrong, any thing said, done,

or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

When facts not otherwise relevant become relevant.

11. Facts not otherwise relevant are relevant—

- (1) if they are inconsistent with any fact in issue or relevant fact ;
- (2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.*

Illustrations.

(a.) The question is, whether A committed a crime at Calcutta on a certain day. The fact that, on that day, A was at Lahore, is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b.) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C, or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C, or D, is relevant.

1872.

Act 1.

In suits for damages, facts tending to enable Court to determine amount are relevant.

12. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

Facts relevant when right or custom is in question.

13. Where the question is as to the existence of any right or custom, the following facts are relevant :—

(a) Any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted, or denied, or which was inconsistent with its existence ;

(b.) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted, or departed from.

Illustration.

The question is, whether A has right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

14. Facts showing the existence of any state of mind—such as intention, knowledge, good faith, negligence, rashness,

Facts showing existence of state of mind, or of body, or bodily feeling.

ill-will, or good-will towards any particular person, or showing the existence of any state of body or

bodily feeling—are relevant, when the existence of any such state of mind, or body, or bodily feeling, is in issue or relevant.

Explanation.—A fact relevant as showing the existence of a relevant state of mind must show that it exists, not generally, but in reference to the particular matter in question.

Illustrations.

(a.) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles, is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(b.) A is accused of fraudulently delivering to another person a piece of counterfeit coin, which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin, is relevant.

(c.) A sues B for damage done by a dog of B's, which B knew to be ferocious. The facts that the dog had previously bitten X, Y, and Z, and that they had made complaints to B, are relevant.

(d.) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant, as showing that A knew that the payee was a fictitious person.

(e.) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

1872.

Act 1.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(f.) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(g.) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(h.) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not, in good faith, believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property, and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(i.) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

(j.) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(k.) The question is, whether A has been guilty of cruelty towards B, his wife. Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(l.) The question is, whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms are relevant facts.

(m.) The question is, what was the state of A's health at the time when an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question are relevant facts.

(n.) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A is injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

(o.) A is tried for the murder of B by intentionally shooting him dead.

The fact that A, on other occasions, shot at B, is relevant, as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(p.) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

15. When there is

Facts bearing on question whether act was accidental or intentional.

a question whether an act was accidental or intentional, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustrations.

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Act 1.

(a) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance-office, are relevant, as tending to show that the fires were not accidental.

(b.) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(c.) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D, and E, are relevant, as showing that the delivery to B was not accidental.

16. When there is a question whether a particular act was done, the

Existence of course of business when relevant. existence of any course of business according to which it naturally would have been done, is a relevant fact.

Illustrations.

(a) The question is whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(b.) The question is whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

Admissions.

17. An admission is a statement, oral or documentary, which suggests

Admission defined.

any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances hereinafter mentioned.

18. Statements made by a party to the proceeding, or by an agent to

Admission—by party to any such party, whom the Court regards, under proceeding or his agent; the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

Statements made by parties to suits, suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

Statements made by—

(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

by person from whom interest derived. (2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

are admissions, if they are made during the continuance of the interest of the persons making the statements.

1872.

Act 1.

19. Statements made by persons, whose position or liability it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Illustration.

A undertakes to collect rents for B.
 B sues A for not collecting rent due from C to B.
 A denies that rent was due from C to B.
 A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

Admissions by persons expressly referred to by party to suit.

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration.

The question is whether a horse sold by A to B is sound.
 A says to B, 'Go and ask C: C knows all about it.' C's statement is an admission.

21. Admissions are relevant and may be proved as against the person who makes them, or his representative in interest,* but they cannot be proved by or on behalf of the person who makes them, or by his representative in interest, except in the following cases:—

(1.) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

(2.) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3.) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations.

(a.) The question between A and B is whether a certain deed is or is not forged. A affirms that it is genuine; B, that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(b.) A, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business, showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

(c) A is accused of a crime committed by him at Calcutta. He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause (2).

(d.) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e.) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not, and that that person did examine it, and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

22. Oral admissions as to the contents of a document are not relevant,

When oral admissions as to contents of documents are relevant. unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

23. In civil cases no admission is relevant, if it is made either upon an

Admissions in civil cases when relevant. express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney, or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

24. A confession made by an accused person is irrelevant in a criminal

Confession caused by inducement, threat, or promise, when irrelevant in criminal proceeding. proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat, or promise, having reference to the charge against the accused person, proceeding from a person in authority,* and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession to police-officer not to be proved.

25. No confession made to a police-officer shall be proved as against a person accused of any offence.

26. No confession made by any person whilst he is in the custody of a

Confession by accused while in custody of police not to be proved against him. police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person

How much of information received from accused may be proved. accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

1872.

Act 1.

Confession made after removal of impression caused by inducement, threat, or promise, relevant.

28. If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat, or promise, has, in the opinion of the Court, been fully removed, it is relevant.

29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.*

Illustrations.

(a.) A and B are jointly tried for the murder of C. It is proved that A said, 'B and I murdered C.' The Court may consider the effect of this confession as against B.

(b.) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said, 'A and I murdered C.'

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

31. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

Statements by persons who cannot be called as witnesses.

32. Statements, written or verbal, of relevant facts, made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:—

(1.) When the statement is made by a person as to the cause of his death; or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2.) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment, written or signed by him, of the

* 10 Bom. H. C. R. 499; 19 Suth. W. R., Cr., 23.

receipt of money, goods, securities, or property of any kind ; or of a document used in commerce, written or signed by him ; or of the date of a letter or other document usually dated, written, or signed by him.

(3.) When the statement is against the pecuniary or proprietary interest or against interest of the person making it, or when, if true, it would expose him, or would have exposed him, to a criminal prosecution or to a suit for damages.

(4.) When the statement gives the opinion of any such person, as to the existence of any public right or custom, or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom, or matter had arisen.

(5.) When the statement relates to the existence of any relationship by blood, marriage, or adoption* between persons as relationship ; to whose relationship of blood, marriage, or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(6.) When the statement relates to the existence of any relationship by blood, marriage, or adoption* between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family-pedigree, or upon any tombstone, family-portrait, or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7.) When the statement is contained in any deed, will, or other document which relates to any such transaction as is mentioned in section 13, clause (a).

(8.) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(a.) The question is whether A was murdered by B ; or A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B ; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.

(b.) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother, and delivered her of a son, is a relevant fact.

(c.) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that, on a given day, the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(d.) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm, by which she was chartered, to their correspondents in London, to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

* See s. 2, Act XVIII., 1872.

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Act 1.

(e.) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A, saying that he had received the rent on A's account, and held it at A's orders, is a relevant fact.

(f.) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(g.) The question is, whether A, a person who cannot be found, wrote a letter on a certain day.

The fact that a letter written by him is dated on that day is relevant.

(h.) The question is, what was the cause of the wreck of a ship.

A protest made by the captain, whose attendance cannot be procured, is a relevant fact.

(i.) The question is, whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(j.) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased baniya in the ordinary course of his business, is a relevant fact.

(k.) The question is, whether A, who is dead, was the father of B.

A statement by A that B was his son is a relevant fact.

(l.) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(m.) The question is whether, and when, A and B were married.

An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(n.) A sues B for a libel expressed in a painted caricature exposed in a shop-window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

33. Evidence given by a witness in a judicial proceeding, or before any

*Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable.*

~~Provided—~~

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

Statements made under Special Circumstances.

34. Entries in books of account, regularly kept in the course of busi-

Entries in books of account when relevant.

ness, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

EVIDENCE.

Illustration.

A sues B for Rs. 1,000, and shows entries in his account-books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

35. An entry in any public or other official book, register, or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact.

36. Statements of facts in issue or relevant facts, made in published maps, charts, and plans. maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts, or plans, are themselves relevant facts.

37. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any Act of the Governor-General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Government appearing in the *Gazette of India*, or in the gazette of any Local Government, or in any printed paper purporting to be the *London Gazette* or the *Government Gazette* of any colony or possession of the Queen, is a relevant fact.

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country, and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

How much of a Statement is to be proved.

39. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book, or series of letters or papers, as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

Judgments of Courts of Justice when relevant.

40. The existence of any judgment, order, or decree, which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact, when the question is whether such Court ought to take cognizance of such suit, or to hold such trial.

1872.

Act 1.

(21.) A final judgment, order, or decree of a competent Court in the exercise of probate, matrimonial, admiralty, or insolvency jurisdiction, which confers upon or takes away from any person any legal character or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person, but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order, or decree is conclusive proof

that any legal character which it confers accrued at the time when such judgment, order, or decree came into operation ;

that any legal character to which it declares any such person to be entitled accrued to that person at the time when such judgment, order, or decree* declares it to have accrued to that person ;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order, or decree* declared that it had ceased or should cease ;

and that any thing to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order, or decree* declares that it had been or should be his property.

42. Judgments, orders, or decrees, other than those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the inquiry ; but such judgments, orders, or decrees are not conclusive proof of that which they state.†

Relevancy and effect of judgments, orders, or decrees, other than those mentioned in section 41.

Illustration.

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

43. Judgments, orders, or decrees, other than those mentioned in sections 40, 41, and 42, are irrelevant, unless the existence of such judgment, order, or decree, is a fact in issue, or is relevant under some other provision of this Act.

Judgments, &c., other than those mentioned in sections 40—42, when relevant.

(a.) A and B separately sue C for a libel which reflects upon each of them. C in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b.) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(c.) A prosecutes B for stealing a cow from him. B is convicted.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d.) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

* See s. 3, Act XVIII, 1872.

† 22 South. W. R., C. R. 365.

EVIDENCE.

44. Any party to a suit or other proceeding may show that any judgment, order, or decree, which is relevant under section 40, 41, or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.

Opinions of Third Persons, when relevant.

45. When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting, the opinions upon that point of persons specially skilled in such foreign law, science, or art, or in questions as to identity of handwriting,* are relevant facts.
Such persons are called experts.

Opinions of experts.

Illustrations.

- (a.) The question is, whether the death of A was caused by poison. The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.
(b.) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law. The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.
(c.) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A. The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

46. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when of experts.

Facts bearing upon opinions of experts.

such opinions are relevant.

Illustrations.

- (a.) The question is, whether A was poisoned by a certain poison. The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.
(b.) The question is, whether an obstruction to a harbour is caused by a certain sea-wall. The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed, that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

* See s. 4, Act XVIII., 1872.

EVIDENCE.

1872.

Act 1

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The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A, and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C, and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C, nor D ever saw A write.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence, if it existed, are relevant.

Opinion as to existence of right or custom when relevant.

Explanation.—The expression, 'general custom or right,' includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

49. When the Court has to form an opinion as to—

Opinions as to usages, tenets, &c., when relevant.

the usages and tenets of any body of men or family,

the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon are relevant facts.

50. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by

Opinion on relationship, when relevant.

conduct, as to the existence of such relationship,

of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under section 494, 495, 497, or 498 of the Indian Penal Code.

Illustrations.

(a.) The question is, whether A and B were married. The fact that they were usually received and treated by their friends as husband and wife is relevant.

(b.) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family is relevant.

51. Whenever the opinion of any living person is relevant, the

Grounds of opinion, when relevant.

grounds on which such opinion is based are also relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

Character when relevant.

52. In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

In civil cases character to prove conduct imputed, irrelevant.

In criminal cases, previous good character relevant.

53. In criminal proceedings the fact that the person accused is of a good character is relevant.

54. In criminal proceedings, the fact that the accused person has been previously convicted of any offence is relevant : but the fact that he has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

In criminal proceedings previous conviction relevant, but not previous bad character, except in reply.

Explanation.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

55. In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Character as affecting damages.

Explanation.—In sections 52, 53, 54, and 55, the word ‘character’ includes both reputation and disposition ; but evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation and disposition were shown.

PART II.—ON PROOF.

CHAPTER III.—FACTS WHICH NEED NOT BE PROVED.

Facts judicially noticeable need not be proved.

56. No fact of which the Court will take judicial notice need be proved.

Facts of which Court must take judicial notice.

57. The Court shall take judicial notice of the following facts :—

(1.) All laws or rules having ‘the force of law, now or heretofore in force or hereafter to be in force, in any part of British India :

(2.) All public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed :

(3.) Articles of War for Her Majesty’s Army or Navy :

(4.) The course of proceeding of Parliament and of the Councils for the purpose of making Laws and Regulations established under the Indian Councils’ Act, or any other law for the time being relating thereto :

Explanation.—The word ‘Parliament,’ in clauses (2) and (4), includes—

1. The Parliament of the United Kingdom of Great Britain and Ireland ;

2. The Parliament of Great Britain ;

3. The Parliament of England ;

4. The Parliament of Scotland ; and

5. The Parliament of Ireland :

(5.) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland :

(6.) All seals of which English Courts take judicial notice ; the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor-General or any Local Government in Council ; the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public ; and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India :

(7.) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the *Gazette of India*, or in the official gazette of any Local Government :

1872. (8.) The existence, title, and national flag of every State or Sovereign recognized by the British Crown :

Act 1. (9.) The divisions of time, the geographical divisions of the world, and public festivals, fasts, and holidays notified in the official gazette :

(10.) The territories under the dominion of the British Crown :

(11.) The commencement, continuance, and termination of hostilities between the British Crown and any other State or body of persons :

(12.) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders, and other persons authorized by law to appear or act before it :

(13.) The rule of the road on land or at sea.*

In all these cases, and also on all matters of public history, literature, science, or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

58. No fact need be proved in any proceeding which the parties thereto

Facts admitted need not be proved. or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which, by any rule of pleading in force at the time, they are deemed to have admitted by their pleadings : Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

CHAPTER IV.—OF ORAL EVIDENCE.

Proof of facts by oral evidence.

59. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct.

60. Oral evidence must, in all cases whatever, be direct ; that is to say ;

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it ;

~~If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it ;~~

If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner ;

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds :

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises, if the author is dead, or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable :

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

CHAPTER V.—OF DOCUMENTARY EVIDENCE.

1872.

Proof of contents of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

Act 1.

Primary evidence.

62. Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document :

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest : but where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

63. Secondary evidence means and includes—

- (1.) Certified copies given under the provisions hereinafter contained ;
- (2.) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies ;
- (3.) Copies made from or compared with the original ;
- (4.) Counterpart of documents as against the parties who did not execute them ;
- (5.) Oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(a.) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b.) A copy compared with a copy of a letter made by a copying-machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying-machine was made from the original.

(c.) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence ; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d.) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Proof of documents by primary evidence.

64. Documents must be proved by primary evidence, except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

65. Secondary evidence may be given of the existence, condition, or contents of a document in the following cases :—

- (a.) When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or

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of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b.) When the existence, condition, or contents of the original have been proved to be admitted in writing by the person against whom it is proved, or by his representative in interest;

(c.) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d.) When the original is of such a nature as not to be easily moveable;

(e.) When the original is a public document within the meaning of section 74;

(f.) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence;

(g.) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c), and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

66. Secondary evidence of the contents of the documents referred to in

Rules as to notices to produce. section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence

has previously given to the party in whose possession or power the document is, or to his attorney or pleader,* such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:—

(1.) When the document to be proved is itself a notice;

(2.) When, from the nature of the case, the adverse party must know that he will be required to produce it;

(3.) When it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(4.) When the adverse party or his agent has the original in Court;

(5.) When the adverse party or his agent has admitted the loss of the document;

(6.) When the person in possession of the document is out of reach of, or not subject to, the process of the Court.

67. If a document is alleged to be signed or to have been written

Proof of signature and handwriting of person alleged to have signed or written document produced.

wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

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68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and, subject to the process of the Court, capable of giving evidence.

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

70. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

71. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

72. An attested document not required by law to be attested may be proved as if it was unattested.

73. In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

Public Documents.

74. The following documents are public documents :—

1. Documents forming the Acts, or records of the Acts—
 - (i) of the sovereign authority,
 - (ii) of official bodies and tribunals, and
 - (iii) of public officers, legislative, judicial, and executive, whether British India, or of any other part of Her Majesty's dominions, or of a foreign country.

2. Public records kept in British India of private documents.

Private documents.

75. All other documents are private.

76. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person, on demand, a copy of it, on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

1872. **77.** Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Act 1. Proof of documents by production of certified copies.

Proof of other official documents.

78. The following public documents may be proved as follows :—

(1.) Acts, orders, or notifications of the Executive Government of British India in any of its departments, or of any Local Government or any department of any Local Government,

by the records of the departments, certified by the heads of those departments respectively, •

or by any document purporting to be printed by order of any such Government ;

(2.) The proceedings of the legislatures,

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government ;

(3.) Proclamations, orders, or regulations issued by Her Majesty, or by the Privy Council, or by any department of Her Majesty's Government,

by copies or extracts contained in the *London Gazette*, or purporting to be printed by the Queen's Printer ;

(4.) The Acts of the Executive or the proceedings of the legislature of a foreign country,

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor-General of India in Council ;

(5.) The proceedings of a municipal body in British India,

by a copy of such proceedings certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body ;

Public documents of any other class in a foreign country,

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

Presumptions as to Documents.

79. The Court shall presume every document purporting to be a certificate, certified copy, or other document which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor-General in Council, to be genuine : Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf. The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

80. Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession

Presumption as to document produced as record of evidence.

by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

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that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true; and that such evidence, statement, or confession was duly taken.

81. The Court shall presume the genuineness of every document purporting to be the *London Gazette*, or the *Gazette of India*, or the Government Gazette of any Local Government, or of any colony, dependency, or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law, and is produced from proper custody.

82. When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp, or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims:

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, and of every book purporting to contain reports of decisions of the Courts of such country.

85. The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, British Consul, or Vice-Consul, or representative of Her Majesty or of the Government of India, was so executed and authenticated.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India resident in such country to be the manner commonly in use in that country for the certification of copies of judicial records.

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87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

89. The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped, and executed in the manner required by law.

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations.

(a.) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his title to it. The custody is proper.

(b.) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(c.) A, a connection of B, produces deeds relating to lands in B's possession which were deposited with him by B for safe custody. The custody is proper.

CHAPTER VI.—OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant, or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved. 1872.
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Exception 2.—Wills admitted to probate in British India* may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants, or dispositions of property referred to, are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(a.) If a contract be contained in several letters,* all the letters in which it is contained must be proved.

(b.) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c.) If a bill of exchange is drawn in a set of three, one only need be proved.

(d.) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e.) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

92. When the terms of any such contract, grant, or other disposition of

property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms :

Proviso 1.—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto ; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso 2.—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms may, be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso 3.—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant, or disposition of property, may be proved.

Proviso 4.—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant, or disposition of property, may be proved, except in cases in which such contract, grant, or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

* See s. 7, Act XVIII., 1872.

1872. *Proviso 5.*—Any usage or custom, by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

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Proviso 6.—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(a.) A policy of insurance is effected on goods 'in ships from Calcutta to London.' The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.

(b.) A agrees absolutely in writing to pay B Rs. 1,000 on the first March 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March, cannot be proved.

(c.) An estate, called 'the Rámpur tea estate,' is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate, and was meant to pass by the deed, cannot be proved.

(d.) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e.) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f.) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g.) A sells B a horse, and verbally warrants him sound. A gives B a paper in these words: 'Bought of A a horse for Rs. 500.' B may prove the verbal warranty.

(h.) A hires lodgings of B, and gives B a card on which is written—'Rooms, Rs. 200 a month.' A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the terms verbally.

(i.) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt, and does not send the money. In a suit for the amount, A may prove this.

(j.) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

93. When the language used in a document is, on its face, ambiguous

Exclusion of evidence to explain or amend ambiguous document.

or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations.

(a.) A agrees, in writing, to sell a horse to B for 'Rs. 1,000 or Rs. 1,500.'

Evidence cannot be given to show which price was to be given.

(b.) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

94. When language

Exclusion of evidence against application of document to existing facts.

used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration.

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A sells to B, by deed, 'my estate at Rámpur containing 100 bighás.' A has an estate at Rámpur containing 100 bighás. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Evidence as to document in unmeaning reference to existing facts.

Illustration.

A sells to B, by deed, 'my house in Calcutta.'

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

96. When the facts are such that the language used might have been

Evidence as to application of language which can apply to one only of several persons. meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Illustrations.

(a.) A agrees to sell to B, for Rs. 1,000, 'my white horse.' A has two white horses. Evidence may be given of facts which show which of them was meant.

(b.) A agrees to accompany B to Haidarábád. Evidence may be given of facts showing whether Haidarábád in the Dekkhan or Haidarábád in Sindh was meant.

97. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

Illustration.

A agrees to sell to B 'my land at X in the occupation of Y.' A has land at X, but not in the occupation of Y; and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

98. Evidence may be given to show the meaning of illegible or not

Evidence as to meaning of illegible characters, &c. commonly intelligible characters, of foreign, obsolete, technical, local, and provincial expressions, of abbreviations, and of words used in a peculiar sense.

Illustration.

A, a sculptor, agrees to sell to B 'all my mods.' A has both models and modelling tools. Evidence may be given to show which he meant to sell.

99. Persons who are not parties to a document, or their representatives

Who may give evidence of agreement varying terms of document. in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Illustration.

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

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Saving of provisions of
Indian Succession Act relat-
ing to wills.

100. Nothing in this chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X. of 1865) as to the construction of wills.

PART III.—PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.—OF THE BURDEN OF PROOF.

101. Whoever desires any Court to give judgment as to any legal right
Burden of proof. or liability dependent on the existence of facts
which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(a.) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(b.) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts.

102. The burden of proof in a suit or proceeding lies on that person
On whom burden of proof who would fail if no evidence at all were given on
lies. either side.

Illustrations.

(a.) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(b.) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed, and the fraud is not proved.

Therefore the burden of proof is on B.

103. The burden of proof as to any particular fact lies on that person
Burden of proof as to parti- who wishes the Court to believe in its existence,
cular fact. unless it is provided by any law that the proof of
that fact shall lie on any particular person.

Illustration.

A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

104. The burden of proving any fact necessary to be proved in order to
Burden of proving fact to enable any person to give evidence of any other
be proved to make evidence fact is on the person who wishes to give such
admissible. evidence.

Illustrations.

(a.) A wishes to prove a dying declaration by B. A must prove B's death.

(b.) A wishes to prove, by secondary evidence, the contents of a lost document. A must prove that the document has been lost.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case **1872.**

Burden of proving that case of accused comes within exceptions. • within any of the general exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

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Illustrations.

(a.) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(b.) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(c.) Section three hundred and twenty-five of the Indian Penal Code provides that whoever, except in the case provided for by section three hundred and thirty-five, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section three hundred and twenty-five.

The burden of proving the circumstances bringing the case under section three hundred and thirty-five lies on A.

Burden of proving fact especially within knowledge.

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations.

(a.) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b.) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

107. When the question is whether a man is alive or dead, and it is

Burden of proving death of person known to have been alive within thirty years.

shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

108. Provided that when* the question is whether a man is alive or

Burden of proving that person is alive who has not been heard of for seven years.

dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to* the person who affirms it.

109. When the question is whether persons are partners, landlord and

Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.

tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

110. When the question is whether any person is owner of anything of

Burden of proof as to ownership.

which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

* See s. 9, Act XVIII, 1872.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other

Proof of good faith in transactions where one party is in relation of active confidence. **in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.**

Illustrations.

(a.) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(b.) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

112. The fact that any person was born during the continuance of a

Birth during marriage, conclusive proof of legitimacy. **valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.**

113. A notification in the *Gazette of India* that any portion of British

Proof of cession of territory. **territory has been ceded to any Native State, Prince, or Ruler,* shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.**

114. The Court may presume the existence of any fact which it thinks

Court may presume existence of certain facts. **likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.**

Illustrations.

The Court may presume—

(a.) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession ;

(b.) That an accomplice is unworthy of credit, unless he is corroborated in material particulars ;

(c.) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration ;

(d.) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence ;

(e.) That judicial and official acts have been regularly performed ;

(f.) That the common course of business has been followed in particular cases ;

(g.) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it ;

(h.) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him ;

(i.) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it :—

As to illustration (a)—A shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business ;

* See, for example, *Gazette of India*, 4th January 1873, p. 2.

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As to illustration (b)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself :

As to illustration (b)—A crime is committed by several persons. A, B, and C, three of the criminals, are captured on the spot, and kept apart from each other. Each gives an account of the crime implicating B, and the accounts corroborate each other in such a manner as to render previous concert highly improbable.

As to illustration (c)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence :

As to illustration (d)—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course :

As to illustration (e)—A judicial act, the regularity of which is in question, was performed under exceptional circumstances :

As to illustration (f)—The question is whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances :

As to illustration (g)—A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family :

As to illustration (h)—A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked :

As to illustration (i)—A bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.—ESTOPPEL.

115. When one person has, by his declaration, act, or omission, intentionally caused or permitted another person to believe a thing to be true, and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

116. No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable and of license of person property ; and no person who came upon any immoveable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it ; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

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Explanation 1.—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation 2.—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX.—OF WITNESSES.

118. All persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.—A lunatic is not incompetent to testify, unless he is pre-
cepted by his lunacy from understanding the questions put to him, and giving rational answers to them.

119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

120. In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be competent witness.

121. No Judge or Magistrate shall, except upon the Special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to any thing which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations.

(a.) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(b.) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(c.) A is accused before the Court of Session of attempting to murder a police-officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

122. No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

124. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

125. No Magistrate or police-officer shall be compelled to say whence he got any information as to the commission of any offence.

126. No barrister, attorney, pleader, or vakil, shall, at any time, be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney, or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

(1) Any such communication made in furtherance of any* illegal purpose;

(2) Any fact observed by any barrister, pleader, attorney, or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader,* attorney, or vakil, was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

Illustrations.

(a.) A, a client, says to B, an attorney, 'I have committed forgery, and I wish you to defend me.'

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b.) A, a client, says to B, an attorney, 'I wish to obtain possession of property by the use of a forged deed, on which I request you to sue.'

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c.) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

127. The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys, and vakils.

128. If any party to a suit gives evidence herein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned

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in section 126; and if any party to a suit or proceeding calls any such barrister, pleader,* attorney, or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney, or vakil on matters which, but for such question, he would not be at liberty to disclose.

129. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

130. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds, or some person through whom he claims.

131. No one shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly or indirectly, to criminate such witness, or that it will expose, or tend, directly or indirectly, to expose, such witness to a penalty or forfeiture of any kind:

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

133. An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

134. No particular number of witnesses shall in any case be required for the proof of any fact.

CHAPTER X.—OF THE EXAMINATION OF WITNESSES.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

* See s. 10, Act XVIII, 1872.

136. When either party proposes to give evidence of any fact, the Judge to decide as to admissibility of evidence. Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence, if he thinks that the fact, if proved, would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(a.) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section thirty-two.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(b.) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(c.) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(d.) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C, and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C, or D is proved, or may require proof of B, C, and D before permitting proof of A.

Examination-in-chief.

137. The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination.

The examination of a witness by the adverse party shall be called his cross-examination.

The examination of a witness, subsequent to the cross-examination, by the party who called him, shall be called his re-examination.

Re-examination.

Order of examinations.

Direction of re-examination.

138. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Witnesses to character.

140. Witnesses to character may be cross-examined and re-examined.

141. Any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question.

Leading questions.

142. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

When they may be asked.

143. Leading questions may be asked in cross-examination.

144. Any witness may be asked, whilst under examination, whether any contract, grant, or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is whether A assaulted B.

C deposes that he heard A say to D, 'B wrote a letter accusing me of theft, and I will be revenged on him.' This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

145. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

146. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—

- (1) to test his veracity
- (2) to discover who he is, and what is his position in life, or
- (3) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.

148. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations:—

(1.) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(2.) Such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(3.) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence:

(4.) The Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer, if given, would be unfavourable.

149. No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations.

(a.) A barrister is instructed by an attorney or vakil that an important witness is a dakait. This is a reasonable ground for asking the witness whether he is a dakait.

(b.) A pleader is informed by a person in Court that an important witness is a dakait. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dakait.

(c.) A witness, of whom nothing whatever is known, is asked at random whether he is dakait. There are here no reasonable grounds for the question.

(d.) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dakait.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil, or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil, or attorney is subject in the exercise of his profession.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

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Questions intended to insult or annoy.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

153. When a witness has been asked, and has answered, any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime, and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

(a.) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(b.) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(c.) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(d.) A is asked whether his family has not had a blood-feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

154. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him :—

(1.) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit ;

(2.) By proof that the witness has been bribed, or has accepted* the offer of a bribe, or has received any other corrupt inducement to give his evidence ;

(3.) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted ;

(4.) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief,

* See s. 11, Act XVIII., 1872.

but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence. 1872. Act 1.

Illustrations.

(a.) A sues B for the price of goods sold and delivered to B.

C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(b.) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

156. When a witness whom it is intended to corroborate gives evidence

Questions tending to corroborate evidence of relevant fact, admissible. of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

157. In order to corroborate the testimony of a witness, any former

Former statements of witness may be proved to corroborate later testimony as to same fact. statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

158. Whenever any statement relevant under section 32 or 33 is proved,

What matters may be proved in connection with proved statement relevant under section 32 or 33. all matters may be proved, either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person

had been called as a witness, and had denied upon cross-examination the truth of the matter suggested.

159. A witness may, while under examination, refresh his memory by

Refreshing memory. referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

Whenever a witness may refresh his memory by reference to any docu-

When witness may use copy of document to refresh memory. ment, he may, with the permission of the Court, refer to a copy of such document: Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

1872.

Act 1.

Testimony to facts stated in document mentioned in section 159.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

161. Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party, if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

Right of adverse party as to writing used to refresh memory.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence; and if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code.

Translation of documents.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence, if the party producing it requires him to do so.

Giving, as evidence, of document called for and produced on notice.

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence, without the consent of the other party, or the order of the Court.

Using, as evidence, of document, production of which was refused on notice.

Illustration.

A sues B on an agreement, and gives B notice to produce it. At the trial, A calls for the document, and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

165. The Judge may, in order to discover, or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing: and neither parties, nor their agents, shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Judge's power to put questions or order production.

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved : 1872.

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Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document, which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party ; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149 ; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

166. In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses through or by leave of the Judge, which the Judge himself might put, and which he considers proper.

CHAPTER XI.—OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

No new trial for improper admission or rejection of evidence.

EVIDENCE.**SCHEDULE.****ENACTMENTS REPEALED.**

[See section 2.]

Number and year.	Title.	Extent of repeal.
Stat. 26, Geo. III., cap. 57.	For the further regulation of the trial of persons accused of certain offences committed in the East Indies ; for repealing so much of an Act, made in the twenty-fourth year of the reign of his present Majesty (intituled ' An Act for the better regulation and management of the affairs of the East India Company and of the British possessions in India, and for establishing a Court of Judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies'), as requires the servants of the East India Company to deliver inventories of their estates and effects, for rendering the laws more effectual against persons unlawfully resorting to the East Indies ; and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India.	Section 38, so far as it relates to Courts of Justice in the East Indies.
Stat. 14 & 15 Vic., cap. 99.	To amend the Law of Evidence ...	Section 11, and so much of section 19 as relates to British India.
Act XV, of 1852 ...	To amend the Law of Evidence ...	So much as has not been heretofore repealed.
Act XIX. of 1853 ...	To amend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency.	Section 19.
Act II. of 1855 ...	For the further improvement of the Law of Evidence.	So much as has not been heretofore repealed.
Act XXV. of 1861...	For simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter.	Section 237.
Act I. of 1868 ...	The General Clauses' Act, 1868 ...	Sections 7 and 8.

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THE GENERAL CLAUSES ACT, NO. I. OF 1868.

RECEIVED THE G.-C.'s ASSENT ON THE 3RD JANUARY 1868.

An Act for shortening the language used in Acts of the Governor-General of India in Council and for other purposes.

WHEREAS it is expedient to shorten the language used in Acts made by the Governor-General of India in Council, and to make certain provisions relating to such Acts ; It

Preamble.

is hereby enacted as follows :—

1. This Act may be cited as “The General Clauses’ Act, 1868.”

Short title.

2. In this Act and in all Acts made by the Governor-General of India in Council after this Act shall have come into operation,—unless there be something repugnant to the subject or context,—

Interpretation-clause.

(1.) Words importing the masculine gender shall be taken to include females ;

(2.) Words in the singular shall include the plural, and *vice versa* ;

(3.) “Person” shall include any company, or association, or body of individuals, whether incorporated or not ;

(4.) “Year” and “month” shall respectively mean a year and month reckoned according to the British calendar ;

(5.) “Immoveable property” shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth ;

(6.) “Moveable property” shall mean property of every description, except immoveable property ;

(7.) “Her Majesty” shall include Her heirs and successors to the Crown ;

(8.) “British India” shall mean the territories for the time being vested in Her Majesty by the Statute 21 & 22 Vic., cap. 106 (*An Act for the better government of India*), other than the Settlement of Prince of Wales’s Island, Singapore, and Malacca ;

(9.) “Government of India” shall denote the Governor-General of India in Council, or, during the absence of the Governor-General of India from his Council, the President in Council, or the Governor-General of India alone, as regards the powers which may be lawfully exercised by them or him respectively ;

(10.) “Local Government” shall mean the person authorized by law to administer executive government in the part of British India in which the Act containing such expression shall operate, and shall include a Chief Commissioner ;

(11.) “High Court” shall mean the highest Civil Court of appeal in such part ;

(12.) “District Judge” shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction ;

(13.) “Magistrate” shall include all persons exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure ;

(14.) “Barrister” shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland ;

(15.) “Section” shall denote a section of the Act in which the word occurs ;

1868.
Act 1.
- (16.) "Will" shall include a codicil and every writing making a voluntary posthumous distribution of property ;
- (17.) "Oath," "swear," and "affidavit," shall include affirmation, declaration, affirming, and declaring in the case of persons by law allowed to affirm or declare instead of swearing ;
- (18.) "Imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code ;
- (19.) And in the case of any one whose personal law permits adoption, "son" shall include an adopted son, and "father" an adoptive father.
3. In all Acts made by the Governor-General of India in Council after this Act shall have come into operation—
- (1) for the purpose of reviving, either wholly or partially, a Statute, Act, or Regulation repealed, it shall be necessary expressly to state such purpose ;
- Revival of repeal enactments.
- (2) for the purpose of excluding the first in a series of days or any other period of time, it shall be sufficient to use the word "from ;"
- Commencement of time.
- (3) for the purpose of including the last in a series of days or any other period of time, it shall be sufficient to use the word "to ;"
- Termination of time.
- (4) for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully executing the duties of such office in the place of their superior, it shall be sufficient to prescribe the duty of the superior ;
- Official chiefs and subordinates.
- (5) for the purpose of indicating the relation of a law to the successors of any functionaries, or of corporations having perpetual succession, it shall be sufficient to express its relation to the functionaries or corporations ; and
- Successors.
- (6) for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, it shall be sufficient to mention the official title of the officer at present executing such functions, or that of the officer by whom the functions are commonly executed.
- Substitution of functionaries.
4. Whenever by any Act or Regulation now in force or hereafter to be in force, any duty of customs or excise, or in the nature thereof, is leviable on any given quantity, by weight, measure, or value, of any goods or merchandise, a like duty shall be leviable according to the same rate on any greater or less quantity.
- Duty may be taken *pro rata*.
5. The provisions of sections sixty-three to seventy, both inclusive, of the Indian Penal Code, and of section three hundred and seven* of the Code of Criminal Procedure, shall apply to all fines imposed under the authority of any Act hereafter to be passed, unless such Act shall contain an express provision to the contrary.
- Recovery of fines.
6. The repeal of any Statute, Act, or Regulation, shall not affect anything done, or any offence committed, or any fine or penalty incurred, or any proceedings† commenced, before the repealing Act shall have come into operation.
- Matters done under enactment before its repeal unaffected.

* See now s. 386 *et seq.*, Act X. of 1882.

† This includes a suit in which a decree has been given.—6 Bom. H. C. R., A. C. J., 169.

THE HINDU WILLS ACT, NO. XXI. OF 1870.

RECEIVED THE G. G.'S ASSENT ON THE 19TH JULY 1870.

An Act to regulate the Wills of Hindús, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay.

WHEREAS it is expedient to provide rules for the execution, attestation, revocation, revival, interpretation, and probate of the wills of Hindús, Jains, Sikhs, and Buddhists in the territories subject to the Lieutenant-Governor of Bengal and in the towns of Madras and Bombay; It is hereby enacted as follows :—

Preamble.

1. This Act may be called "The Hindú Wills Act, 1870,"

Certain portions of Act X. of 1865 extended to wills of Hindús, Jains, Sikhs, and Buddhists.

2. The following portions of the Indian Succession Act, 1865, namely,—

sections forty-six, forty-eight, forty-nine, fifty, fifty-one, fifty-five, and fifty-seven to seventy-seven (both inclusive),

sections eighty-two, eighty-three, eighty-five, eighty-eight to one hundred and three (both inclusive),

sections one hundred and six to one hundred and seventy-seven (both inclusive),

and section one hundred and eighty-seven,*

shall, notwithstanding anything contained in section three hundred and thirty-one of the said Act, apply—

(a) to all wills and codicils made by any Hindú, Jaina, Sikh, or Buddhist, on or after the first day of September one thousand

Extent of Act. eight hundred and seventy, within the said territories or the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such wills and codicils made outside those territories and limits, so far as relates to immoveable property situated within those territories or limits :

Provisoes.

3. Provided that marriage shall not revoke any such will or codicil :

And that nothing herein contained shall authorize a testator to bequeath property which he could not have alienated *inter vivos*, or to deprive any persons of any right of maintenance of which, but for section two of this Act, he could not deprive them by will :

* This line has been inserted by the Probate and Administration Act (V. of 1881), s. 154, in lieu of the following clauses:—

"sections one hundred and seventy-nine to one hundred and eight-nine (both inclusive),

"sections one hundred and ninety-one to one hundred and ninety-nine (both inclusive),

"so much of Parts XXX. and XXXI. as relates to grants of probate and letters of administration with the will annexed, and

"Parts XXXIII. to XL. (both inclusive), so far as they relate to an executor and an administrator with the will annexed."

1870. And that nothing herein contained shall vest in the executor or administrator with the will annexed of a deceased person any property which such person could not have alienated *inter vivos* :

Act 21.

And that nothing herein contained shall affect any law of adoption or intestate succession :

And that nothing herein contained shall authorize any Hindú, Jaina, Sikh, or Buddhist to create in property any interest which he could not have created before the first day of September one thousand eight hundred and seventy.

4. On and from that day, section two of Bengal Regulation V. of 1799 shall be repealed so far as relates to the executors of persons who are not Muhammadans, but are subject to the jurisdiction of a District Court in the territories subject to the Lieutenant-Governor of Bengal.

Partial repeal of Bengal Regulation V. of 1799, section 2.

5. Nothing contained in this Act shall affect the rights, duties, and privileges of the Administrators-General of Bengal, Madras, and Bombay, respectively.*

Saving of rights of Administrators-General.

6. In this Act and in the said sections and Parts† of the Indian Succession Act all words defined in section three of the same Act shall, unless there be something repugnant in the subject or context, be deemed to have the same meaning as the said section three has attached to such words respectively.

Interpretation-clause.

And in applying sections sixty-two, sixty-three, ninety-two, ninety-six, ninety-eight, ninety-nine, one hundred, one hundred and one, one hundred and two, one hundred and three, and one hundred and eighty-two, of the said Succession Act, to wills and codicils made under this Act, the words "son," "sons," "child," and "children," shall be deemed to include an adopted child ; and the word "grandchildren," shall be deemed to include the children, whether adopted or natural-born, of a child, whether adopted or natural-born ; and the expression "daughter-in-law" shall be deemed to include the wife of an adopted son :

And in making grants, under this Act, of letters of administration with the will annexed, or with a copy of the will annexed, section one hundred and ninety-five of the said Succession Act shall be construed as if the words "and in case the Hindú Wills Act had not been passed" were added thereto ; and section one hundred and ninety-eight of the said Succession Act shall be construed as if, after the word "intestate," the words "and the Hindú Wills Act had not been passed" were inserted ; and sections two hundred and thirty and two hundred and thirty-one of the said Succession Act shall be construed as if the words, "if the Hindú Wills Act had not been passed," were added thereto, respectively.

* See Act II. of 1874.

† The words "and Parts" should have been repealed. See foot-note in p. 201.

THE LAND-ACQUISITION ACT, NO. X. OF 1870.

RECEIVED THE G.-G.'s ASSENT ON THE 1ST APRIL 1870.

*An Act for the Acquisition of Land for Public Purposes and for Companies.**

WHEREAS it is expedient to consolidate and amend the law for the acquisition of land needed for public purposes and for Companies, and for determining the amount of compensation to be made on account of such acquisition; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title.

1. This Act may be called "The Land Acquisition Act, 1870 :"

Local extent.

It extends to the whole of British India ;†

Commencement.

And it shall come into force on the first day of June 1870.

2. On and from such day Act No. VI. of 1857 (*for the acquisition of land for public purposes*), Act No. II. of 1861 (*to amend Act No. VI. of 1857*), and Act No. XXII.

Repeal of Acts.

of 1863 (*to provide for taking land for works of public utility to be constructed by private persons or Companies, and for regulating the construction and use of works on land so taken*), shall be repealed.

All references made to any of the said Acts in subsequent Acts, orders, or contracts, shall be read as if made to this Act.

Interpretation-clause.

3.‡ In this Act—

The expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth :

The expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act :

the expression "Collector" means the Collector of a District, and includes a Deputy Commissioner and any officer specially appointed by the Local Government to perform the functions of a Collector under this Act :

The expression "Court" means, in the Regulation Provinces, "the Panjáb,"§ British Burma, and Sindh, a principal Civil Court of original jurisdiction,

and in the Non-regulation Provinces other than "the Panjáb,"§ British Burma, and Sindh, the Court of a Commissioner of a Division,

* To be read with the Land Acquisition (Mines) Act (XVIII. of 1885). Printed at p. 217.

† It has also been applied to Mysore (8th June 1870) and the Haidarâbâd Assigned Districts (14th July 1870).

‡ So much of this section as declares the Commissioner of a Division to be a principal Civil Court of original jurisdiction in Oudh has been repealed by Act XIII. of 1879

§ The words quoted have been added by the Panjáb Courts Act (XVIII. of 1884), s. 74.

1870.
Act 10.

unless when the Local Government has appointed (as it is hereby empowered to do), either specially for any case, or generally within any specified local limits, a judicial officer to perform the functions of a Judge under this Act, and then the expression "Court" means the Court of such officer;

The expression "Company" means a Company registered under the Indian Companies' Act, 1866, or formed in pursuance of an Act of Parliament, or by Royal Charter or Letters Patent:

And the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided (that is to say)—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability:

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age; and

the guardians of minors and the committees of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics, or idiots themselves, if free from disability, could have acted.

PART II.

ACQUISITION.

Preliminary Investigation.

4. Whenever it appears to the Local Government that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the local Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

Thereupon it shall be lawful for any officer either generally or specially authorized by such Government in this behalf, and for his servants and workmen,

to enter upon and survey and take levels of any land in such locality:

to dig or bore into the sub-soil:

to do all other acts necessary to ascertain whether the land is adapted for such purpose:

to set out the boundaries of the land proposed to be taken and the

Power to mark out line.

intended line of the work (if any) proposed to be made thereon:

to mark such levels, boundaries, and line by placing marks and cutting trenches;

and, where otherwise the survey cannot be completed, and the levels taken, and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence, or jungle:

Power to clear land.

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

Previous notice of entry.

1870.
Act 10.

5. The officer so authorized shall, at the time of such entry, pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or intendered, he shall at once refer the dispute to the decision of the Collector, and such decision shall be final.

Declaration of Intended Acquisition.

6. Subject to the provisions of Part VII. of this Act, whenever it appears to the Local Government that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government, or of some officer duly authorized to certify its orders :

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid out of public revenues, or out of some municipal fund, or by a Company.

The declaration shall be published in the local official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be ; and after making such declaration, the Local Government may acquire the land in manner hereinafter appearing.

7. Whenever any land shall have been so declared to be needed for a public purpose, or for a Company, the Local Government, or some officer authorized by the Local Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

8. The Collector shall thereupon cause the land (unless it has been already marked out under section four) to be marked out. He shall also cause it to be measured, and (if no plan has been made thereof) a plan to be made of the same.

9. The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests.

The Collector shall also service notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside, or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate.

1870.
Act 10.

In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post.

10. The Collector may also require any such person to deliver to him a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant, or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for the year next preceding the date of the statement.

Every person required to make or deliver a statement under this section or section nine shall be deemed to be legally bound to do so within the meaning of section one hundred and seventy-five and one hundred and seventy-six of the Indian Penal Code.

Enquiry into Value and Claims.

11. On the day so fixed, the Collector shall proceed to enquire summarily into the value of the land and to determine the amount of compensation which in his opinion should be allowed thereof, and shall tender such amount to the persons interested who have attended in pursuance of the notice.

For the purpose of such enquiry, the Collector shall have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and (as far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure.

12. The Collector may, if no claimant attends pursuant to the notice, or if, for any other cause, he thinks fit, from time to time, postpone the enquiry to a day to be fixed by him.

13. In determining the amount of compensation the Collector shall take into consideration the matters mentioned in section twenty four, and shall not take into consideration any of the matters mentioned in section twenty-five.

Award by Collector.

14. If the Collector and the persons interested agree as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same.

Such award shall be filed in the Collector's office, and shall be conclusive evidence, as between the Collector and the persons interested, of the value of the land and the amount of compensation allowed for the same.

15. When the Collector proceeds to make the enquiry as aforesaid, whether on the day originally fixed for the enquiry or on the day to which it may have been postponed,

if no claimant attends,
or if the Collector considers that further enquiry as to the nature of the claim ought to be made by the Court,
or if any person whom the Collector has reason to think interested does not attend,

or if the Collector is unable to agree with the persons interested who have attended in pursuance of the notice as to the amount of compensation to be allowed, 1870.
Act 10.

or if upon the said enquiry any question respecting the title to the land, or any rights thereto or interests therein, arise between or among two or more persons making conflicting claims in respect thereof,

the Collector shall refer the matter to the determination of the Court in manner hereinafter appearing.

Taking Possession.

16. When the Collector has made an award under section fourteen or a reference to the Court under section fifteen, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

17. In cases of urgency, whenever the Local Government so directs, the Collector (though no such reference has been made or award made) may, on the expiration of fifteen days from the publication of the notice mentioned in the first paragraph of section nine, take possession of any waste or arable land needed for public purposes or for a Company.

Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

The Collector shall offer to the persons interested compensation for the standing crops and trees (if any) on such land; and in case such offer is not accepted, the value of such crops and trees shall be allowed for in awarding compensation for the land under the provisions herein contained.

PART III.

REFERENCE TO COURT AND PROCEDURE THEREON.

18. In making a reference under section fifteen, the Collector shall state for the information of the Court, in writing under his hand,

- (a) the situation and extent of the land needed.
- (b) the names of the persons whom he has reason to think interested in such land,
- (c) the amount awarded for damages, and paid or tendered under sections five and seventeen, or either of them, the amount of compensation tendered for the land under section eleven, or, if no claimant has attended pursuant to the notice mentioned in section nine, the amount of compensation which the Collector is willing to give to the persons interested, and
- (d) the grounds on which the amount of compensation was determined.

19. The Court shall thereupon cause to be served on each of the persons so named a notice requiring him (if he has not made a claim under section nine) to state to the Court, on or before a day to be therein mentioned, the sum which he claims as compensation for his interest in the land so needed.

The Court shall also cause a notice to be served on the Collector and each of such persons, requiring them to appoint, on or before a day to be therein mentioned, two qualified assessors (one to be nominated by the Collector, and the other by the persons interested) for the purpose of aiding the Judge in determining the amount of the compensation.

1870. If no claimant has attended pursuant to the notice mentioned in section nine, the Court shall cause to be affixed on some conspicuous place, on or near the land needed, a notice to the effect that, if the persons interested in such land do not, on or before a day to be therein mentioned, appear in Court and state the nature of their respective interests in the land and the amount and particulars of their claims to compensation, and nominate a qualified assessor, the Court will proceed to determine such amount.

20. In case of failure to nominate either of such assessors within the time so specified, the Judge shall himself appoint an assessor in his stead.

21. As soon as the assessors have been appointed, the Judge and the assessors shall proceed to determine the amount of the compensation.

22. If, before such amount is determined, any of the assessors dies, or desires to be discharged, or refuses or neglects, or becomes incapable, to act, the party by whom he was appointed may appoint some other qualified person to act in his place.

If the assessor so dying, or desiring to be discharged, or refusing, or neglecting, or becoming incapable, were appointed by the Judge, or, in the case of an assessor appointed by either party, if for the space of seven days after notice from the Court for that purpose the party who appointed such assessor fails to appoint another,

the Judge shall appoint some other qualified person in his stead.

Every assessor so substituted shall have the same powers as were vested in the former assessor at the time of his so dying, or desiring to be discharged, or refusing or neglecting or becoming incapable.

23. Every proceeding under section twenty-one shall take place in open Court, and all persons entitled to practise in any Civil Court shall be entitled to appear, plead, and act, or to appear and act (as the case may be) in such proceeding.

Matters to be considered in determining compensation.

24. In determining the amount of compensation to be awarded for land acquired under this Act, the Judge and assessors shall take into consideration—

First, the market-value, at the time of awarding compensation, of such land :

Secondly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of severing such land from his other land :

Thirdly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of the acquisition injuriously affecting his other property, whether moveable or immoveable, in any other manner, or his earnings ; and

Fourthly, if, in consequence of the acquisition, he is compelled to change his residence, the reasonable expenses (if any) incidental to such change.

Matters to be neglected in determining compensation.

25. But the Judge or assessors shall not take into consideration—

First, the degree of urgency which has led to the acquisition :

Secondly, any disinclination of the person interested to part with the land acquired :

Thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit :

1870.
Act 10.

Fourthly, any damage which, after the time of awarding compensation, is likely to be caused by or in consequence of the use to which the land acquired will be put :

Fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired :

Sixthly, any increase to the value of the other land of the person interested, likely to accrue from the use to which the land acquired will be put ; or

Seventhly, any outlay or improvements on such land made, commenced, or effected with the intention of enhancing the compensation to be awarded therefor under this Act.

26. Where the person interested has made a claim to compensation, Rules as to amount of compensation. pursuant to any notice mentioned in section nine or in section nineteen, the amount awarded to him shall not exceed the amount so claimed, or be less than the amount tendered by the Collector under section eleven.

Where the person interested has refused to make such claim, or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded may be less than, and shall in no case exceed, the amount so tendered.

Where the person interested has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him shall not be less than, and may exceed, the amount so tendered.

The provisions of this and the two preceding sections shall be read to every assessor, in a language which he understands, before he gives his opinion as to the amount of compensation to be awarded under this Act.

27. The opinion of each assessor shall be given orally, and shall be recorded in writing by the Judge.

28. In case of a difference of opinion between the Judge and the assessors, or any of them, upon a question of law or practice, or usage having the force of law, the opinion of the Judge shall prevail, and there shall be no appeal therefrom.

29. In case the Judge and one or both of the assessors agree as to the amount of compensation, their decision thereon shall be final.

30. In case of difference of opinion between the Judge and both of the assessors* as to the amount of compensation, the decision of the Judge shall prevail, subject to the appeal allowed under section thirty-five.

31. Every assessor appointed under this Act, not being an officer of Government, shall receive such fee for his services as the Judge shall direct, provided that such fee shall not exceed five hundred rupees.

Such fee shall be deemed to be costs in the proceeding.

32. The costs of all proceedings taken under this Part by order of the Court shall, in the first instance, be paid by the Collector.

33. Where the amount awarded does not exceed the sum tendered by the Collector, the costs of all proceedings under this Part shall be paid by the person interested.

* Whether or not they agree with each other, 17 Suth. W. R. 225.

1870. Where the amount awarded exceeds the sum so tendered, such costs shall be paid by the Collector.

Act 10.

34. Every award made under this Part shall be in writing signed by the Judge and the assessors or assessor concurring therein, and shall specify the amount awarded under the first clause of section twenty-four, and also the amounts (if any) respectively awarded under the second, third, and fourth clauses of the same section, together with the grounds of awarding each of the said amounts.

It shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what portions they are to be paid.

The costs (if any) payable by the person interested, and not deducted under section forty-two, may be recovered as if they were costs incurred in a suit, and as if the award were the decree therein.

35. If the Judge differs from both the assessors as to the amount of compensation, he shall pronounce his decision, and the Collector or the person interested (as the case may be) may appeal therefrom to the Court of the District Judge,* unless the Judge whose decision is appealed from is the District Judge, or unless the amount which the Judge proposes to award exceeds five thousand rupees, in either of which cases the appeal shall lie to the High Court.

Every appeal under this section shall be presented within the time and in manner provided by the Code of Civil Procedure for regular appeals in suits.

Provisions of Code of Civil Procedure made applicable. **36.** The following provisions of the Code of Civil Procedure :—

- (a) as to adding parties,
 - (b) as to adjournment,
 - (c) as to death, marriage, and bankruptcy or insolvency of parties,
 - (d) as to summoning witnesses and their attendance,
 - (e) as to examination of parties and witnesses,
 - (f) as to production of documents, and
 - (g) as to commissions to examine absent witnesses and to make local inquiries,
- shall apply, so far as may be, to proceedings before the Court.

PART IV.

APPORTIONMENT OF COMPENSATION.

37. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

38. When the amount of compensation has been settled under section fourteen, if any dispute arises as to the apportionment of the same or any part thereof, the Collector shall refer such dispute to the decision of the Court.

39. When the amount of compensation has been settled by the Court, **1870.**

Determination of proportions. and there is any dispute as to the apportionment thereof, or when a reference to the Court has been made under section thirty-eight, the Judge sitting alone shall decide the proportions in which the persons interested are entitled to share in such amount. **Act 10.**

An appeal shall lie from such decision to the High Court, unless the Judge whose decision is appealed from is not the District Judge, in which case the appeal shall lie in the first instance to the District Judge.

Every appeal under this section shall be presented within the time and in manner provided* for regular appeals in suits.

PART V.

PAYMENT.

40. Payment of the compensation shall be made by the Collector according-

Payment of compensation to whom made. ing to the award to the persons named therein, or, in the case of an appeal under section thirty-nine, according to the decision on such appeal :

Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

41. When the amount of the compensation has been settled under sec-

Payment on making award by Collector. tion fourteen, if the persons interested shall so desire, the Collector shall, on the making of the same award, pay the amount of such compensation, and take possession of the land :

Provided that, in any case where immediate possession is not required, he may allow the occupants (if any) of the land to remain in occupation of the same, upon such terms as he and they may agree on, until possession of the land is required.

42. In addition to the amount of any compensation awarded under

Percentage on market-value. Part II. or Part III. of this Act, the Collector shall, in consideration of the compulsory nature of the acquisition, pay fifteen per centum on the market-value mentioned in section twenty-four.

When the amount of such compensation is not paid on taking possession,

Payment with interest. the Collector shall pay the amount awarded and the said percentage with interest on such amount and percentage at the rate of six per centum per annum from the time of so taking possession :

Provided that the costs (if any) payable to the Collector by the person interested shall be deducted from such amount and percentage :

Provided that, in cases where the decision of the Court under Part III.

Time of payment in appealable cases. or Part IV. of this Act is liable to appeal, the Collector shall not pay the amount of compensation or the percentage, or any part thereof, until the time for appealing against such decision has expired, and no appeal shall have been presented against such decision, or until any such appeal shall have been disposed of.

1870.

PART VI.

Act 10.

TEMPORARY OCCUPATION OF LAND.

43. Subject to the provisions of Part VII. of this Act, whenever it appears to the Local Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the Local Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

In case the Collector and the persons interested differ as to the sufficiency of the compensation, the Collector shall refer such difference for the final order of the Court.

Power to enter and take possession.

44. On payment of such compensation,

or on executing such agreement,
or on making a reference under section forty-three,
the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

And on the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein :

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and, if the persons interested shall so require, the Local Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

45. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference for the final order of the Court, and on such reference, or on a reference under section forty-three, the Judge sitting alone shall decide the difference referred.

PART VII.

ACQUISITION OF LAND FOR COMPANIES.

46. Subject to such rules as the Governor-General of India in Council may, from time to time, prescribe in this behalf, the Local Government may authorize any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section four.

In every such case section four shall be construed as if, for the words "for such purpose," the words "for the purposes of the Company" were substituted, and section five shall be construed as if, after the words "the officer," the words "of the Company" were inserted. 1870. Act 10.

47. The provisions of section six to section forty-five (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the Local Government, and unless the Company shall have executed the agreement hereinafter mentioned.

48. Such consent shall not be given unless the Local Government be satisfied, by an enquiry held as hereinafter provided—

(1) that such acquisition is needed for the construction of some work, and

(2) that such work is likely to prove useful to the public.

Such enquiry shall be held by such officer and at such time and place as the Local Government shall appoint.

Such officer may summon and enforce the attendance of witnesses, and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure in the case of a Civil Court.

49. Such officer shall report to the Local Government the result of the enquiry, and if the Local Government is satisfied that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall, subject to such rules as the Governor-General of India in Council may from time to time prescribe in this behalf, require the Company to enter into an agreement with the Secretary of State for India in Council, providing to the satisfaction of the Local Government for the following matters, namely:—

- (1.) The payment to Government of the cost of the acquisition :
- (2.) The transfer, on such payment, of the land to the Company :
- (3.) The terms on which the land shall be held by the Company :
- (4.) The time within which, and the conditions on which, the work shall be executed and maintained ; and
- (5.) The terms on which the public shall be entitled to use the work.

50. Every such agreement shall, as soon as may be after its execution, be published in the *Gazette of India*, and also in the local official Gazette, and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

PART VIII.

MISCELLANEOUS.

51. Service of any notice under this Act shall be made by delivering or tendering a copy thereof, signed, in the case of a notice under section four, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

1870. Whenever it may be practicable, the service of the notice shall be made on the person therein named.
Act 10.

When such person cannot be found, the service may be made on any adult male member of his family residing with him; and if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business.

52. Whoever wilfully obstructs any person in doing any of the acts authorized by section four or section eight, or wilfully fills up, destroys, damages, or displaces any trench or mark made under section four, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

Obstruction to survey, &c.
 Filling trenches.
 Destroying land-marks.

53. If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras, and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

Magistrate to enforce surrender.

54. Except in the case provided for in section forty-four, nothing in this Act shall be taken to compel the Government to complete the acquisition of any land unless an award shall have been made or a reference directed under the provisions hereinbefore contained.

Government not bound to complete acquisition.

But whenever the Government declines to complete any such acquisition, the Collector shall determine the amount of compensation due for the damage (if any) done to such land under section four or section eight, and not already paid for under section five, and shall pay such amount to the person injured.

Compensation when acquisition is not completed.

55. The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory, or other building, if the owner desire that the whole of such house, manufactory, or building shall be so acquired.*

Part of house or building not to be taken.

56. Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any Municipal Fund, or of any Company, the charges incurred by the Collector in such acquisition shall be defrayed from or by such Fund or Company.

Payment of Collector's charges by Municipal Body or Company.

57. No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Exemption from stamp-duty and fees.

58. No suit shall be brought to set aside an award under this Act.

Bar of suits to set aside awards under Act.

* See 5 Bom. H. C. R., O. C. J. 98, a decision on the corresponding section of Act VI. of 1857.

And no suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends, nor after the expiration of three months from the accrual of the cause of suit or other proceeding.*

1870.

Act 10.

59. The Local Government shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may, from time to time, alter and add to the rules so made.

All such rules, alterations, and additions, shall, when sanctioned by the Governor-General in Council, be published in the local official Gazette, and shall thereupon have the force of law.†

* Repealed, so far as it relates to the limitation of suits, by Act IX. of 1871, s. 2.

† See the Bengal Rules, *Calcutta Gazette*, 7th July 1875, p. 818: Bombay Rules, *Bombay Government Gazette*, 13th March 1873, p. 226: North-Western Provinces Rules, *North-Western Provinces Gazette*, 18th December 1875, p. 1744.

LAND-ACQUISITION (MINES) ACT, NO. XVIII. OF 1885.

RECEIVED THE G.-G.'s ASSENT ON THE 16TH OCTOBER, 1885.

An Act to provide for cases in which Mines or Minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870.

WHEREAS it is expedient to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870 ; It is hereby enacted as follows :—

Short title, commencement, and local extent. 1. (1) This Act may be called the Land Acquisition (Mines) Act, 1885 ; and

(2) It shall come into force at once.

(3) It extends in the first instance to the territories administered by the Governor of Madras in Council and the Lieutenant Governor of Bengal, but any other Local Government may, from time to time, by notification in the official Gazette, extend this Act to the whole or any specified part of the territories under its administration.

Saving for mineral rights of the Government.

2. Except as expressly provided by this Act, nothing in this Act shall affect the right of the Government to any mines or minerals.

3. (1) When the Local Government makes a declaration under section 6 of the Land Acquisition Act, 1870, that land is needed for a public purpose or for a Company, it may, if it thinks fit, insert in the declaration a statement that the mines of coal, iron-stone, slate, or other minerals lying under the land or any particular portion of the land, except only such parts of the mines or minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired, are not needed.

(2) When a statement as aforesaid has not been inserted in the declaration made in respect of any land under section 6 of the Land Acquisition Act, 1870, and the Collector is of opinion that the provisions of this Act ought to be applied to the land, he may abstain from tendering compensation under section 11 of the said Land Acquisition Act in respect of the mines, and may—

(a) when he makes an award under section 14 of that Act insert such a statement in his award ;

(b) when he makes a reference to the Court under section 15 of that Act, insert such a statement in his reference ; or

(c) when he takes possession of the land under section 17 of that Act, publish such a statement in such manner as the Governor-General in Council may, from time to time, prescribe.

(3) If any such statement is inserted in the declaration, award, or reference, or published as aforesaid, the mines of coal, iron-stone, slate, or other minerals under the land or proportion of the land specified in the statement, except as aforesaid, shall not vest in the Government when the land so vests under the said Act.

1885.
Act 18.

4. If the person for the time being immediately entitled to work or get any mines or minerals lying under any land so acquired is desirous of working or getting the same, he shall give the Local Government notice in writing of his intention so to do sixty days before the commencement of working.

5. (1) At any time or times after the receipt of a notice under the last foregoing section, and whether before or after the expiration of the said period of sixty days, the Local Government may cause the mines or minerals to be inspected by a person appointed by it for the purpose; and

(2) If it appears to the Local Government that the working or getting of the mines or minerals, or any part thereof, is likely to cause damage to the surface of the land or any works thereon, the Local Government may publish, in such manner as the Governor-General in Council may, from time to time, direct, a declaration of its willingness, either—

(a) to pay compensation for the mines or minerals still unworked or ungotten, or that part thereof, to all persons having an interest in the same; or

(b) to pay compensation to all such persons in consideration of those mines or minerals, or that part thereof, being worked or gotten in such manner and subject to such restrictions as the Local Government may in its declaration specify.

(3) If the declaration mentioned in case (a) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person.

(4) If the declaration mentioned in case (b) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person save in the manner and subject to the restrictions specified by the Local Government.

6. When the working or getting of any mines or minerals has been prevented or restricted under section 5, the persons interested in those mines or minerals and the amounts of compensation payable to them respectively shall, subject to all necessary modifications, be ascertained in the manner provided by the Land Acquisition Act, 1870, for ascertaining the persons interested in the land to be acquired under that Act, and the amounts of compensation payable to them, respectively.

7. (1) If before the expiration of the said sixty days the Local Government does not publish a declaration as provided in section 5, the owner, lessee, or occupier of the mines, may, unless and until such a declaration is subsequently made, work the mines or any part thereof in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area where the same are situate.

(2) If any damage or obstruction is caused to the surface of the land or any works thereon by improper working of the mines, the owner, lessee, or occupier of the mines, shall at once, at his own expense, repair the damage, or remove the obstruction, as the case may require.

(3) If the repair or removal is not at once effected, or, if the Local Government so thinks fit, without waiting for the same to be effected by the owner, lessee, or occupier, the Local Government may execute the same, and recover from the owner, lessee, or occupier the expense occasioned thereby.

8. If the working of any mines is prevented or restricted under section 5, the respective owners, lessees, and occupiers of the mines, if their mines extend so as to lie on both sides of the mines the working of which is prevented or restricted, may cut and make such and so many airways, headways, gateways, or water-levels through the mines, measures, or strata, the working whereof is prevented or restricted, as may be requisite to enable them to ventilate, drain, and work their said mines; but no such airway, headway, gateway, or water-level, shall be of greater dimensions or section than may be prescribed by the Governor-General in Council in this behalf, and, where no dimensions are so prescribed, not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the surface or works, or so as to injure the same, or to interfere with the use thereof. 1885. Act 18.

Mining communications.

both sides of the mines the working of which is prevented or restricted, may cut and make such and so many airways, headways, gateways, or water-levels through the mines, measures, or strata, the working whereof is prevented or restricted, as may be requisite to enable them to ventilate, drain, and work their said mines; but no such airway, headway, gateway, or water-level, shall be of greater dimensions or section than may be prescribed by the Governor-General in Council in this behalf, and, where no dimensions are so prescribed, not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the surface or works, or so as to injure the same, or to interfere with the use thereof.

9. The Local Government shall, from time to time, pay to the owner, lessee, or occupier of any such mines extending so as to lie on both sides of the mines, the working of which is prevented or restricted, all such additional expenses and losses as may be incurred by him by reason of the severance of the lands lying over those mines or of the continuous working of those mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the surface or works, and for any minerals not acquired by the Local Government which cannot be obtained by reason of the action taken under the foregoing sections; and if any dispute or question arises between the Local Government and the owner, lessee, or occupier as aforesaid, touching the amount of those losses or expenses, the same shall be settled as nearly as may be in the manner provided for the settlement of questions touching the amount of compensation payable under the Land Acquisition Act, 1870

Local Government to pay compensation for injury done to mines. • of which is prevented or restricted, all such additional expenses and losses as may be incurred by him by reason of the severance of the lands lying over those mines or of the continuous working of those mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the surface or works, and for any minerals not acquired by the Local Government which cannot be obtained by reason of the action taken under the foregoing sections; and if any dispute or question arises between the Local Government and the owner, lessee, or occupier as aforesaid, touching the amount of those losses or expenses, the same shall be settled as nearly as may be in the manner provided for the settlement of questions touching the amount of compensation payable under the Land Acquisition Act, 1870

10. If any loss or damage is sustained by the owner or occupier of the lands lying over any such mines, the working whereof has been so prevented or restricted as aforesaid (and not being the owner, lessee, or occupier of those mines), by reason of the making of any such airway or other works as aforesaid, which or any like work it would not have been necessary to make but for the working of the mines having been so prevented or restricted as aforesaid, the Local Government shall pay full compensation to that owner or occupier of the surface lands for the loss or damage so sustained by him.

And also for injury arising from any airway or other work. whereof has been so prevented or restricted as aforesaid (and not being the owner, lessee, or occupier of those mines), by reason of the making of any such airway or other works as aforesaid, which or any like work it would not have been necessary to make but for the working of the mines having been so prevented or restricted as aforesaid, the Local Government shall pay full compensation to that owner or occupier of the surface lands for the loss or damage so sustained by him.

11. For better ascertaining whether any mines lying under land acquired in accordance with the provisions of this Act are being worked, or have been worked or are likely to be worked so as to damage the land or the works thereon, an officer appointed for this purpose by the Local Government may, after giving twenty-four hours' notice in writing, enter into and return from any such mines or the works connected therewith; and for that purpose the officer so appointed may make use of any apparatus or machinery belonging to the owner, lessee, or occupier of the mines, and use all necessary means for discovering the distance from any part of the land acquired to the parts of the mines which have been, are being, or are about to be worked.

Power to officer of Local Government to enter and inspect the working of mines. Act are being worked, or have been worked or are likely to be worked so as to damage the land or the works thereon, an officer appointed for this purpose by the Local Government may, after giving twenty-four hours' notice in writing, enter into and return from any such mines or the works connected therewith; and for that purpose the officer so appointed may make use of any apparatus or machinery belonging to the owner, lessee, or occupier of the mines, and use all necessary means for discovering the distance from any part of the land acquired to the parts of the mines which have been, are being, or are about to be worked.

12. If any owner, lessee, or occupier of any such mines or works, refuses to allow any officer appointed by the Local Government for that purpose to enter into and inspect any such mines or works in manner aforesaid, he shall be punished with fine which may extend to two hundred rupees.

Penalty for refusal to allow inspection. to allow any officer appointed by the Local Government for that purpose to enter into and inspect any such mines or works in manner aforesaid, he shall be punished with fine which may extend to two hundred rupees.

1885.

Act 18.

13. If it appears that any such mines have been worked contrary to the provisions of this Act, the Local Government may, if it thinks fit, give notice to the owner, lessee, or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the land acquired, and the works thereon, and preventing injury thereto; and if, after such notice, any such owner, lessee, or occupier does not forthwith proceed to construct the works necessary for making safe the land acquired and the works thereon, the Local Government may itself construct the works and recover the expense thereof from the owner, lessee, or occupier.

14. When a statement under section 3 has been made regarding any land, and the land has been acquired by the Government, and has been transferred to or has vested by operation of law in a local authority or Company, then sections 4 to 13, both inclusive, shall be read as if for the words "the Local Government," wherever they occur in those sections, the words "the local authority or Company, as the case may be, which has acquired the land," were substituted.

15. (1) This Act shall apply to any land for the acquisition whereof proceedings under the Land Acquisition Act, 1870, are pending at the time when this Act comes into force, unless before that time the Collector has made, in respect of the land, an award under section 14 or a reference to the Court under section 15 of that Act, or has taken possession of the land under section 17 of the same.

(2) When the Collector has, before the said time, made an award or reference in respect of any such land or taken possession thereof as aforesaid, and all the persons interested in the land, or entitled under the Land Acquisition Act, 1870, to act for persons so interested, who have attended or may attend in the course of the proceedings under sections 11 to 15, both inclusive, of the Land Acquisition Act, 1870, consent in writing to the application of this Act to the land, the Collector may, by an order in writing, direct that it shall apply, and thereupon it shall be deemed to have applied from the commencement of the proceedings; and the Collector shall be deemed, as the case may be, to have inserted in his award or reference, or to have published in the prescribed manner, when he took possession, the statement mentioned in section 3 of this Act.

Definition of local authority and Company.

16. In this Act—

(a) "local authority" means any municipal committee, district board, body of port commissioners, or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund; and

(b) "Company" means a Company registered under any of the enactments relating to Companies from time to time in force in British India, or formed in pursuance of an Act of Parliament or by Royal Charter or Letters Patent.

17. This Act shall, for the purposes of all enactments for the time being in force, be read with and taken as part of the Land Acquisition Act, 1870.

This Act to be read with Land Acquisition Act, 1870.

THE LEGAL PRACTITIONERS' ACT.

NQ. XVIII. OF 1879.

RECEIVED THE G.-G.'s ASSENT ON THE 29TH OCTOBER 1879.

An Act to consolidate and amend the law relating to Legal Practitioners.

WHEREAS it is expedient to consolidate and amend the law relating to legal practitioners in the Lower Provinces of Bengal, the North-Western Provinces, the Panjāb, Oudh, the Central Provinces, and Assam, and to empower each of the Local Governments of the rest of British India to extend to the territories administered by it such portions of this Act as such Government may think fit; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Legal Practitioners' Act, 1879," and shall come into force on the first day of January, 1880.

Short title.
Commencement.

Local extent.

This section and section 2 extend to the whole of British India.

The rest of this Act extends, in the first instance, only to the territories respectively administered by the Lieutenant-Governors of the Lower Provinces of Bengal, the North-Western Provinces, and the Panjāb, and the Chief Commissioners of Oudh, the Central Provinces, and Assam. But any other Local Government may, from time to time, by notification in the official Gazette, extend all or any of the provisions of the rest of this Act to the whole or any part of the territories under its administration.

2. On and from the first day of January, 1880, the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified therein.

Repeal of enactments.

All rules and appointments made, penalties prescribed, fees fixed, persons admitted, names enrolled, certificates issued, sanctions given, and orders passed under any enactment hereby repealed, shall be deemed to be respectively made, prescribed, fixed, admitted, enrolled, issued, given, and passed under this Act.

Saving of rules, &c.

All references made to any enactment hereby repealed, in any Act or Regulation passed, or notification published, shall be read as if made to the corresponding provisions of this Act.

References to repealed enactments.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"Judge:"

"Judge" means the presiding judicial officer in every Civil and Criminal Court, by whatever title he is designated :

1870.	"Subordinate Court" means all Courts subordinate to the High Court,
Act 18.	including Courts of Small Causes established under Act No. IX. of 1850 or Act No. XI. of 1865 :
"	"Revenue office" includes all Courts (other than Civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents :
"	"Revenue office :"
"	"Legal practitioner" means an advocate, vakil, or attorney of any High Court, a pleader, mukhtár, or revenue-agent.
"	"Legal practitioner."

CHAPTER II.

OF ADVOCATES, VAKILS, AND ATTORNEYS.

4. Every person now or hereafter entered as an advocate or vakil on the roll of any High Court under the Letters Patent constituting such Court, or "under section 41 of this Act"* shall be entitled to practise in all the Courts subordinate to the Court on the roll of which he is entered, and in all revenue-offices situate within the local limits of the appellate jurisdiction of such Court, subject, nevertheless, to the rules in force relating to the language in which the Court or office is to be addressed by pleaders or revenue-agents ; and any person so entered who ordinarily practises in the Court on the roll of which he is entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court on whose roll he is not entered, or, with the permission of the Court, in any High Court on whose roll he is not entered, and in any revenue-office :

Provided that no such vakil shall be entitled to practise under this section before a Judge of the High Court, Division Court, or High Court exercising original jurisdiction in a presidency-town.

5. Every person now or hereafter entered as an attorney on the roll of any High Court shall be entitled to practise in all the Courts subordinate to such High Court and in all revenue-offices situate within the local limits of the appellate jurisdiction of such High Court, and every person so entered who ordinarily practises in the Court on the roll of which he is so entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court established by Royal Charter on the roll of which he is not entered, and in any revenue-office.

The High Court of the province in which an attorney practises under this section may, from time to time, make rules declaring what shall be deemed to be the functions, powers, and duties of an attorney so practising.

CHAPTER III.

OF PLEADERS AND MUKHTARS.

Power to make rules as to qualification, &c., of pleaders and mukhtárs.

6. The High Court may, from time to time, make rules consistent with this Act as to the following matters (namely) :—

* The words quoted have been substituted for the words, "as an advocate on the roll of the Chief Court of the Panjáb," by Act IX. of 1884, s. 2.

1879.
Act 18.

(a) the qualifications, admission, and certificates of proper persons to be pleaders of the subordinate Courts, and of the revenue-offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter, of such Court ;

(b) the qualifications, admission, and certificates of proper persons to be mukhtárs of the subordinate Courts, and, in the case of a High Court not established by Royal Charter, of such Court ;

(c) the fees to be paid for the examination and admission of such persons ; and

(d) the suspension and dismissal of such pleaders and mukhtárs.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law : Provided that,

Publication of rules.

in the case of rules made by a High Court not established by Royal Charter, such rules have been previously approved by the Local Government.

7. On the admission, under section 6, of any person as a pleader or mukhtár, the High Court shall cause a certificate, signed by such officer as the Court, from time to time, appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in the Courts, and, in the case of a pleader, also the revenue-offices, specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall, subject to any rules consistent with this Act which may, from time to time, be made by the High Court in this behalf, be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court, from time to time, appoints in this behalf.

On every such renewal, the certificate then in possession of such pleader or mukhtár shall be cancelled and retained by such Judge or officer.

Every certificate so renewed shall be signed by such Judge or officer, and shall continue in force up to the end of the current year.

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court.

8. Every pleader holding a certificate issued under section 7 may apply to be enrolled in any Court or revenue-office mentioned therein, and situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted ; and, subject to such rules consistent with this Act as the High Court or the Chief Controlling Revenue Authority may, from time to time, make in this behalf, the presiding Judge or officer shall enrol him accordingly ; and thereupon he may appear, plead, and act in such Court or office, and in any Court or revenue-office subordinate thereto.

9. Every mukhtár holding a certificate issued under section 7 may apply to be enrolled in any Civil or Criminal Court mentioned therein, and situate within the same limits ; and subject to such rules as the High Court may from time to time make in this behalf, the presiding Judge shall enrol him accordingly ; and thereupon he may practise as a mukhtár in any such Civil Court and any Court subordinate thereto, and may (subject to the provisions of the Code of Criminal Procedure) appear, plead, and act in any such Criminal Court and any Court subordinate thereto.

1879. 10. Except as provided by this Act or any other enactment for the time being in force, no person shall practise as a pleader or mukhtár in any Court not established by Royal Charter unless he holds a certificate issued under section 7, and has been enrolled in such Court or in some Court to which it is subordinate :

Act 18. No persons to practise as pleader or mukhtár unless qualified.

Provided that persons who have been admitted as revenue-agents before the first day of January, 1880, and hold certificates, as such, under this Act in the territories administered by the Lieutenant-Governor of Bengal, may be enrolled in manner provided by section 9 in any Munsif's Court in the said territories, and, on being so enrolled, may appear, plead, and act in such Court in suits under Bengal Act No. VIII. of 1869* (to amend the procedure in suits between Landlord and Tenant), or under any other Act for the time being in force regulating the procedure in suits between landholders and their tenants and agents.

11. Notwithstanding anything contained in the Code of Civil Procedure, the High Court may, from time to time, make rules declaring what shall be deemed to be the functions, powers, and duties of mukhtárs practising in the subordinate Courts, and, in the case of a High Court not established by Royal Charter, in such Court.

12. The High Court may suspend or dismiss any pleader or mukhtár holding a certificate issued under section 7 who is convicted of any criminal offence implying a defect of character which unfits him to be a pleader or mukhtár, as the case may be.

Suspension and dismissal of pleaders and mukhtárs convicted of criminal offence.

Suspension and dismissal of pleaders and mukhtárs guilty of unprofessional conduct.

13. The High Court may also, after such enquiry as it thinks fit, suspend or dismiss—

any pleader holding a certificate as aforesaid who takes instructions in any case except from the party on whose behalf he is retained, or a private servant of such party, or some person who is the recognized agent of such party within the meaning of the Code of Civil Procedure, or

any pleader or mukhtár holding a certificate as aforesaid who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or for any other reasonable cause.

Provided that where the party is—

(a) a pardánashin woman, or

(b) unable for any sufficient cause to instruct the pleader in person,

nothing in this section shall make a pleader liable to suspension or dismissal merely by reason that he has taken instructions from a relative or friend authorized by the party to give such instructions and not receiving any remuneration in respect thereof.†

14. If any such pleader or mukhtár practising in any subordinate Court or in any revenue-office is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge, and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

* Superseded by Act VIII. of 1885.

† This proviso has been added by Act IX. of 1884, s. 3.

Such copy and notice shall be served upon the pleader or mukhtár at least fifteen days before the day so appointed. 1879.

Act 18.

On such day or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the pleaded or mukhtár, and shall proceed to adjudicate on the charge.

If such officer finds the charge established, and considers that the pleader or mukhtár should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court; and the High Court may acquit, suspend, or dismiss the pleader or mukhtár.

Any District Judge, or with his sanction any Judge subordinate to him, Suspension pending investigation. "any Judge of a Court of Small Causes of a Presidency-town," * any District Magistrate, or with his sanction any Magistrate subordinate to him, and any Revenue Authority not inferior to a Collector, or with the Collector's sanction any Revenue Officer subordinate to him, may, pending the investigation and the orders of the High Court, suspend from practice any pleader or mukhtár charged before him or it under this section.

Every report made to the High Court under this section shall

(a) when made by any Civil Judge subordinate to the District Judge, be made through such Judge;

(b) when made by a Magistrate subordinate to the Magistrate of the District, be made through the Magistrate of the District and the Sessions Judge;

(c) when made by the Magistrate of the District, be made through the Sessions Judge;

(d) when made by any Revenue Officer subordinate to the Chief Controlling Revenue Authority, be made through such Revenue Authorities as the Chief Controlling Revenue Authority may, from time to time, direct.

Every such report shall be accompanied by the opinion of each Judge, Magistrate, or Revenue Authority through whom or which it is made.

15. The High Court, in any case in which a pleader or mukhtár has been acquitted under section 14 otherwise than by an order of the High Court, may call for the record, and pass such order thereon as it thinks fit.

Power to call for record in case of acquittal under section 14.

16. Notwithstanding anything contained in any Letters Patent or in the Code of Civil Procedure, section 37, clause (a), any High Court established by Royal Charter may, from time to time, make rules consistent with this Act as to the following (namely):—

Power to make rules for mukhtárs on appellate side of High Court.

(a) the qualifications and admission of proper persons to be mukhtárs practising on the appellate side of such Court;

(b) the fees to be paid for the examination and admission of such persons;

(c) the security which they may be required to give for their honesty and good conduct;

(d) the suspension and dismissal of such mukhtárs; and

(e) declaring what shall be deemed to be their functions, powers, and duties;

* The words quoted have been inserted by Act IX. of 1884, s. 4.

1879. and may prescribe and impose fines for infringement of such rules not exceeding in any case five hundred rupees; and such fines, when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction.

Act 18.

CHAPTER IV.

OF REVENUE-AGENTS.

Power to make rules as to qualifications, &c., of revenue-agents.

17. The Chief Controlling Revenue Authority may, from time to time, make rules consistent with this Act as to the following matters (namely):—

(a) the qualifications, admission, and certificates of proper persons to be revenue-agents;

(b) the fees to be paid for the examination and admission of such persons;

(c) the suspension and dismissal of such revenue-agents; and

(d) declaring what shall be deemed to be their functions, powers, and duties.

Publication of rules.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

18. On the admission of any person as a revenue-agent under section 17, the Chief Controlling Revenue Authority shall cause a certificate, signed by such officer as such Authority from time to time appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in such revenue-offices as may be specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Secretary of the Chief Controlling Revenue Authority, or by any other officer authorized by such Authority in that behalf.

On every such renewal, the certificate then in the possession of such revenue-agent shall be cancelled and retained by such Secretary or other officer.

Every certificate so renewed shall be signed by such Secretary or other officer, and shall continue in force to the end of the current year.

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue Authority.

19. Every revenue-agent holding a certificate issued under section 18 may apply to be enrolled in any revenue-office mentioned therein, and situate within the limits of the territory under the Chief Controlling Revenue Authority; and subject to such rules as the Chief Controlling Revenue Authority may, from time to time, make in this behalf, the officer presiding in such office shall enrol him accordingly, and thereupon he may practise as a revenue-agent in such office and in any revenue-office subordinate thereto.

20. Except as provided by this Act or any other enactment for the time being in force, no person, other than a pleader duly qualified under the provisions hereinbefore contained, shall practise as a revenue-agent in any

No person to act as agent in revenue-offices unless qualified.

revenue-office, unless he holds a certificate issued under section 18, and has been enrolled in such office or some other office to which it is subordinate : 1879.

Act 18.

Provided that any person duly authorized in this behalf may, with the sanction of the Chief Controlling Revenue Authority, or of an officer empowered by the Local Government in this behalf, transact all or any business in which his principal may be concerned in any revenue-office.

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by the authority or officer granting the same.

21. The Chief Controlling Revenue Authority may suspend or dismiss any revenue-agent holding a certificate issued under this Act who is convicted of any criminal offence implying a defect of character which unfits him to be a revenue-agent.

22. The Chief Controlling Revenue Authority may also, after making such enquiry as it thinks fit, suspend or dismiss any revenue-agent holding a certificate issued under this Act who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or for any other reasonable cause.

23. If any revenue-agent holding a certificate issued under this Act is charged with any such conduct in any office subordinate to the Chief Controlling Revenue Authority, or in the Court of any Munsif, the officer at the head of such office, or such Munsif, as the case may be, shall send him a copy of the charge, and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the person charged at least fifteen days before the day so appointed. On such day, or on any other day to which the enquiry may be adjourned, the officer or Munsif shall receive all evidence properly produced in support of the charge or by the person charged, and shall proceed to adjudicate on the charge.

If the officer or Munsif finds the charge established, and considers that the person charged should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and report the same to the Chief Controlling Revenue Authority ; and such Authority shall proceed to acquit, suspend, or dismiss him.

Any Revenue Officer not inferior to a Collector, and, with the Collector's sanction, any Revenue Officer subordinate to him, or any Munsif in his district, may, pending the investigation and the orders of the Chief Controlling Revenue Authority, suspend from practice any revenue-agent charged before him under this section.

Where any officer acting under this section is subordinate to the Commissioner of a Division, he shall transmit the report through such Commissioner, who shall forward with the same an expression of his own opinion on the case.

24. The Chief Controlling Revenue Authority, in any case in which a revenue-agent has been acquitted under section 23 otherwise than by an order of the Chief Controlling Revenue Authority, may call for the record, and pass such order thereon as seems fit.

1879.
Act 18.

CHAPTER V.
OF CERTIFICATES.

25. Every certificate, whether original or renewed, issued under this Act, shall be written upon stamped paper of the value prescribed therefor/in the second schedule hereto annexed, "and of such description as the Local Government may from time to time prescribe :"*

Provided that a certificate issued on or after the first day of July in any year may be written on stamped paper of half the value so prescribed.

26. When any pleader, mukhtár, or revenue-agent, is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue Authority (as the case may be) orders him to deliver the same.

CHAPTER VI.

OF THE REMUNERATION OF PLEADERS, MUKHTARS, AND REVENUE-AGENTS.

27. The High Court shall, from time to time, fix and regulate the fees payable by any party in respect of the fees of his adversary's advocate, pleader, vakíl, mukhtár, or attorney upon all proceedings (a) on the appellate side of such Court, (b) in the case of a High Court not established by Royal Charter, on its original side, and (c) in subordinate Courts, "and in respect of the fees of his adversary's revenue-agent appearing, pleading, or acting under section 10."†

The Chief Controlling Revenue Authority shall, from time to time, fix and regulate the fees payable upon all proceedings in the revenue-offices by any party in respect of the fees of his adversary's advocate, pleader, vakíl, attorney, mukhtár, or revenue-agent.

Tables of the fees so fixed shall be published in the local official Gazette.

Exception as to agents mentioned in section 20.

Nothing in this section applies to the agents mentioned in the proviso to section 20.

28. No agreement entered into by any pleader, mukhtár, or revenue-agent with any person retaining or employing him, respecting the amount and manner of payment for the whole or any part of any past or future services, fees, charges, or disbursements in respect of business done or to be done by such pleader, mukhtár, or revenue-agent, shall be valid, unless it is made in writing, signed by such person, and is, within fifteen days from the day on which it is executed, filed in the District Court, or in some Court in which some portion of the business in respect of which it has been executed has been or is to be done.

29. Where a suit is brought to enforce any such agreement, if the agreement is not proved to be fair and reasonable, the Court may reduce the amount payable

* The words quoted have been inserted by Act IX. of 1884, s. 5.

† The words quoted have been added by Act IX. of 1884, s. 6.

thereunder or order it to be cancelled, and the costs, fees, charges, and disbursements in respect of the business done to be ascertained in the same manner as if no such agreement had been made.

1879.
Act 18.

30. Such an agreement shall exclude any further claim of the pleader, mukhtár, or revenue-agent beyond the terms of the agreement with respect to any services, fees, charges, or disbursements in relation to the conduct and completion of the business in respect of which the agreement is made, except such services, fees, charges, or disbursements, if any, as are expressly excepted by the agreement.

31. A provision in any such agreement that the pleader, mukhtár, or revenue-agent, shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as such pleader, mukhtár, or revenue-agent, shall be wholly void.

CHAPTER VII.

PENALTIES.

32. Any person who practises in any Court or revenue-office in contravention of the provisions of section 10 or section 20 shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorizing him so to practise in such Court or office, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

He shall also be incapable of maintaining any suit for, or enforcing any lien with respect to, any fee or reward for, or with respect to, anything done or any disbursement made by him as pleader, mukhtár, or revenue-agent whilst he has been contravening the provisions of either of such sections.

33. Any pleader, mukhtár, or revenue-agent failing to deliver up his certificate as required by section 26, shall be liable, by order of the Court, Authority, or officer to which or to whom, or according to whose orders, the delivery should be made, to a fine not exceeding two hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term which may extend to three months.

34. Any pleader, mukhtár, or revenue-agent, who, under the provisions of this Act, has been suspended or dismissed, and who, during such suspension or after such dismissal, practises as a pleader, mukhtár, or revenue-agent in any Court or revenue-office, shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding five hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

35. Every order under section 32, 33, or 34, shall be subject to revision by the High Court where the order has been passed by a subordinate Court, and by the Chief Controlling Revenue Authority where the order has been passed by an officer subordinate to such Authority.

1879. Penalty for receiving or giving commission. 36. Whoever commits any of the following offences:—
- Act 13. (a) solicits or receives from any legal practitioner any gratification in consideration of procuring or having procured his employment in any legal business;
- (b) retains any gratification out of remuneration paid or delivered, or agreed to be paid or delivered, to any legal practitioner for such employment;
- (c) being a legal practitioner, tenders, gives, or consents to the retention of, any gratification for procuring or having procured the employment in any legal business of himself or any other legal practitioner,
- shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII.

MISCELLANEOUS.

37. To facilitate the ascertainment of the qualifications mentioned in sections 6 and 17 respectively, the Local Government shall, from time to time, appoint persons to be examiners for the purposes aforesaid, and may, from time to time, make regulations for conducting such examinations.

38. Except as provided by sections 4, 5, 16, 27, 32, and 36, nothing in this Act applies to advocates, vakils, and attorneys admitted and enrolled by any High Court under the Letters Patent by which such Court is constituted, or to mukhtars practising in such Court, or to advocates enrolled "under section 41 of this Act."*

39. When any person who holds a certificate as a mukhtar under section 7, and a certificate as a revenue-agent under section 18, is suspended or dismissed in one of such capacities, he shall be deemed to be suspended or dismissed, as the case may be, also in the other.

40. Notwithstanding anything hereinbefore contained, no pleader, mukhtar, or revenue-agent, shall be suspended or dismissed under this Act unless he has been allowed an opportunity of defending himself before the Authority suspending or dismissing him.

41. (1) A High Court not established by Royal Charter may, from time to time, with the previous sanction of the Local Government, make rules as to the qualifications and admission of proper persons to be advocates of the Court, and, subject to such rules, may enrol such and so many advocates as it thinks fit.

(2) Every advocate so enrolled shall be entitled to appear for the suitors of the Court, and to plead or to act, or to plead and act, for those suitors, according as the Court may by its rules determine, and subject to those rules.

* The words quoted have been substituted for the words, "by the Chief Court of the Punjab," by Act IX. of 1884, s. 7.

(3) The High Court may dismiss any advocate so enrolled, or suspend him from practice. 1879.

(4) Provided that an advocate shall not be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the High Court which enrolled him, and, except in the case of the Chief Court of the Panjāb, unless the order of the High Court dismissing or suspending him has been confirmed by the Local Government.* Act 18.

42. Act I. of 1846 (*for amending the law regarding the appointment and remuneration of pleaders in the Courts of the East India Company*) and Act XX. of 1853 (*to amend the law relating to pleaders in the Courts of the East India Company*) are repealed.†

* This section has been substituted by Act IX. of 1884, s. 8, for the one originally enacted.

† This section has been added by Act IX. of 1884, s. 8.

FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

Number and date of Enactments.	Title.	Extent of repeal.
Act XX. of 1865 ...	To amend the law relating to Plead-ers and Mukhtārs.	The whole.
Act XXIX. of 1865 ...	To amend the Plead-ers, Mukhtārs, and Revenue-agents Act, 1865.	So much as has not been repealed.
Act IX. of 1866 ...	To extend to the Sadr Court of the North-Western Provinces certain provisions of the Plead-ers, Mukhtārs, and Revenue-agents Act, 1865, and of Act No. XXIX. of 1865.	The whole.
Act IV. of 1876 ...	To authorize Revenue-agents to practise in certain suits in the Munsifs' Courts of the Lower Pro-vinces of Bengal.	The whole.
Act XVII. of 1877 ...	The Panjāb Courts Act, 1877.	Sections 42, 43, 44, and 45.

SECOND SCHEDULE.

VALUE OF STAMPS FOR CERTIFICATES.

(See section 25.)

I.

For a certificate authorizing the holder to practise as a pleader—

- (a) In the High Court and any subordinate Court—rupees fifty :
- (b) In any Court of Small Causes in a Presidency-town—rupees twenty-five :
- (c) In all other subordinate Courts—rupees twenty-five :
- (d) In the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners, and Tahsildars, in Courts of Small Causes outside the Presidency-towns, and in all Criminal Courts subordinate to the High Court—rupees fifteen :
- (e) In the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

II.

For a certificate authorizing the holder to practise as a mukhtár—

- (f) In the High Court and any subordinate Court—rupees twenty-five :
- (g) In any Court of Small Causes in a Presidency-town—rupees fifteen :
- (h) In all other subordinate Courts—rupees fifteen :
- (i) In the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners, and Tahsildars, in Courts of Small Causes outside the Presidency-towns, and in all Criminal Courts subordinate to the High Court—rupees ten :
- (j) In the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

III.

For a certificate authorizing the holder to practise as a revenue-agent—

- (k) In the office of the Chief Controlling Revenue Authority and in any Revenue-office subordinate to such Authority—rupees fifteen :
- (l) In the office of a Commissioner and in any Revenue-office subordinate to a Commissioner—rupees ten :
- (m) In the office of a Collector and in any Revenue-office subordinate to a Collector—rupees five.

ACT NO. IX. OF 1884.

RECEIVED THE G.-G.'S ASSENT ON THE 16TH MAY 1884.

An Act to amend the Legal Practitioners' Act, 1879, and the Indian Stamp Act, 1879.

WHEREAS it is expedient to amend the Legal Practitioners' Act, 1879, in manner in this Act appearing ;

and whereas it is also expedient to amend the Indian Stamp Act, 1879, in so far as it relates to the duty chargeable on the enrolment of legal practitioners ;

It is hereby enacted as follows :—

1 to 9.—[All the amendments are embodied in the *Legal Practitioners' Act, 1879.*]

10. (1) In Article 27 of Schedule I. of the Indian Stamp Act, 1879, after the words "in exercise of powers conferred on such Court by Letters Patent," the words "or by the Legal Practitioners' Act, 1884," shall be inserted ; and

(2) In clause (a) of Article 11 of Schedule II. of the same Act, the words "established by Royal Charter" shall be repealed.

Amendment of Schedules I. & II of Act I. of 1879. (Duty on enrolment of advocates).

THE INDIAN LIMITATION ACT, NO. XV. OF 1877.

RECEIVED THE G.-G.'s ASSENT ON THE 19TH JULY 1877.

An Act for the Limitation of Suits, and for other Purposes.

WHEREAS it is expedient to amend the law relating to the limitation of suits, appeals, and certain applications to Courts ;
Preamble. And whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property ;
It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title. 1. This Act may be called “The Indian Limitation Act, 1877.”

It extends to the whole of British India ; but nothing contained in sections two and three or in Parts II. and III.
Extent of Act. applies—

- (a) to suits under the Indian Divorce Act, or
- (b) to suits under Madras Regulation VI. of 1831.

Commencement. And it shall come into force on the first day of October 1877.

2. On and from that day the Acts mentioned in the first schedule hereto annexed shall be repealed to the extent therein specified.
Repeal of Acts.

But all references to the Indian Limitation Act, 1871, shall be read as if made to this Act ; and nothing herein or in that Act contained shall be deemed to affect any title acquired, or to revive any right to sue barred, under that Act, or under any enactment thereby repealed ; and nothing herein contained shall be deemed to affect the Indian Contract Act, section 25.
References to Act IX. of 1871. •
Saving of titles already acquired.
Saving of Act IX. of 1872, s. 25.

Notwithstanding anything herein contained, any suit mentioned in No. 146 of the second schedule hereto annexed may be brought within five years next after the said first day of October 1877, unless where the period prescribed for such suit by the said Indian Limitation Act, 1871, shall have expired before the completion of the said five years, and any other suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by the said Indian Limitation Act, 1871, may be brought within two years next after the said first day of October 1877, unless where the period prescribed for such suit by the same Act shall have expired before the completion of the said two years.

3. In this Act, unless there be something repugnant in the subject or context,
Interpretation-clause.

1877. 'plaintiff' includes also any person from or through whom a plaintiff derives his right to sue ; 'applicant' includes also any person from or through
Act 15. whom an applicant derives his right to apply ; and 'defendant' includes also any person from or through whom a defendant derives his liability to be sued :

'easement'* includes also a right, not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another, or any thing growing in, or attached to, or subsisting upon, the land of another :

'bill of exchange' includes also a hundi and a cheque :

'bond' includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be :

'promissory note' means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight :

'trustee' does not include a benámidár, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title :

'suit' does not include an appeal or an application :

'registered' means duly registered in British India under the law for the registration of documents in force at the time and place of executing the document, or signing the decree or order, referred to in the context :

'foreign country' means any country other than British India :

and nothing shall be deemed to be done in 'good faith' which is not done with due care and attention.

PART II.

LIMITATION OF SUITS, APPEALS, AND APPLICATIONS.

4. Subject to the provisions contained in sections five to twenty-five (inclusive), every suit instituted, appeal presented, and application made after the period of limitation prescribed therefor by the second schedule hereto annexed, shall be dismissed, although limitation has not been set up as a defence.

Explanation.—A suit is instituted in ordinary cases when the plaint is presented to the proper officer ; in the case of a pauper, when his application for leave to sue as a pauper is filed ; and in the case of a claim against a Company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

Illustrations.

(a.) A suit is instituted after the prescribed period of limitation. Limitation is not set up as a defence, and judgment is given for the plaintiff. The defendant appeals. The Appellate Court must dismiss the suit.

(b.) An appeal presented after the prescribed period is admitted and registered. The appeal shall, nevertheless, be dismissed.

5. If the period of limitation prescribed for any suit, appeal, or application, expires on a day when the Court is closed, the suit, appeal, or application, may be instituted, presented, or made on the day that the Court re-opens.

* The definition of "easements" is repealed by the Indian Easements Act (V. of 1882) in the territories to which that Act extends.

Any appeal or application for a review of judgment may be admitted 1877.

Proviso as to appeals and after the period of limitation prescribed therefor, applications for review. when the appellant or applicant satisfies the Court Act 15.
that he had sufficient cause for not presenting the appeal or making the application within such period.

6. When, by any special or local law now or hereafter in force in British India, a period of limitation is specially prescribed for any suit, appeal, or application, nothing herein contained shall affect or alter the period so prescribed.

7. If a person entitled to institute a suit or make an application be, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period, after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed.

When he is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or when, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased as would otherwise have been allowed from the time so prescribed.

When his disability continues up to his death, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

When such representative is at the date of the death affected by any such disability, the rules contained in the first two paragraphs of this section shall apply.

Nothing in this section applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

Illustrations.

(a.) The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accruer. He may institute his suit at any time within three years from the date of his attaining majority.

(b.) A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accruer. A has, under the ordinary law, only one year remaining within which to sue. But under this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority within which he may bring his suit.

(c.) A right to sue accrues to Z during his minority. After the accruer, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.

(d.) A right to sue accrues to X during his minority. X dies before attaining majority, and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

(e.) A right to sue for an hereditary office accrues to A, who at the time is insane. Six years after the accruer A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under this section.

(f.) A right to sue as landlord to recover possession from a tenant accrues to A who is an idiot. A dies three years after the accruer, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. This section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

1877.

Act 15.

8. When one of several joint creditors or claimants is under any such disability, and when a discharge can be given without the concurrence of such person, time will run against them all; but where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others.

Illustrations.

(a.) A incurs a debt to a firm, of which B, C, and D, are partners. B is insane and C is a minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C, and D.

(b.) A incurs a debt to a firm, of which E, F, and G, are partners. E and F are insane, and G is a minor. Time will not run against any of them until either, E or F becomes sane, or G attains majority.

9. When once time has begun to run, no subsequent disability or inability to sue stops it:

Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration) for the purpose of following in his or their hands such property, shall be barred by any length of time.

11. Suits instituted in British India on contracts entered into in a foreign country are subject to the rules prescribed by this Act.

No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract, and the parties were domiciled in such country during the period prescribed by such rule.

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

12. In computing the period of limitation prescribed for any suit, appeal, or application, the day from which such period is to be reckoned shall be excluded.

In computing the period of limitation prescribed for an appeal, an application for leave to appeal as a pauper, and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence, or order appealed against or sought to be reviewed, shall be excluded.

Where a decree is appealed against or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

13. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India shall be excluded. 1877.
Act 15.

Exclusion of time of defendant's absence from British India.

14. In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action, and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Exclusion of time of proceeding *bona fide* in Court without jurisdiction.

in which have been stayed by order under the Code of Civil Procedure, section 20, the interval between the institution of the suit and the date of so staying proceedings, and, the time requisite for going from the Court in which proceedings are stayed to the Court in which the suit is re-instituted, shall be excluded.

In computing the period of limitation prescribed for a suit, proceedings in which have been stayed by order under the Code of Civil Procedure, section 20, the interval between the institution of the suit and the date of so staying proceedings, and, the time requisite for going from the Court in which proceedings are stayed to the Court in which the suit is re-instituted, shall be excluded.

In computing the period of limitation prescribed for any application, the time during which the applicant has been making another application for the same relief shall be excluded, where the last-mentioned application is made in good faith to a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to grant it.

Explanation 1.—In excluding the time during which a former suit or application was pending or being made, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation 2.—A plaintiff resisting an appeal presented on the ground of want of jurisdiction shall be deemed to be prosecuting a suit within the meaning of this section.

15. In computing the period of limitation prescribed for any suit, the institution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

Exclusion of time during which commencement of suit is stayed by injunction or order.

16. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which the judgment-debtor has been prosecuting a proceeding to set aside the sale shall be excluded.

Exclusion of time during which judgment-debtor is attempting to set aside execution-sale.

17. When a person who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

Effect of death before right to sue accrues.

When a person against whom, if he were living, a right to institute a suit or make an application would have accrued, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

Nothing in the former part of this section applies to suits to enforce rights of pre-emption or to suits for the possession of immoveable property or of an hereditary office.

1877.
Act 15.

18 When any person, having a right to institute a suit or make an application, has, by means of fraud, been kept from the knowledge of such right, or of the title on which it is founded,

or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application

(a) against the person guilty of the fraud or accessory thereto, or

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

19. If, before the expiration of the period prescribed for a suit or appli-

Effect of acknowledgment in writing. cation in respect of any property or right, an acknowledgment of liability in respect of such prop-

erty or right has been made in writing signed by the party against whom such property or right is claimed, or, by some person through whom he derives title or liability, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the acknowledgment was so signed.

When the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but oral evidence of its contents shall not be received.

Explanation 1.—For the purposes of this section an acknowledgment may be sufficient, though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance, or enjoyment, has not yet come, or is accompanied by a refusal to pay, deliver, perform, or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation 2.—In this section “signed” mean signed either personally or by an agent duly authorized in this behalf.

20. When interest on a debt or legacy is, before the expiration of the

Effect of payment of interest as such. prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf,

or when part of the principal of a debt is, before the expiration of the

Effect of part-payment of principal. prescribed period, paid by the debtor or by his agent duly authorized in this behalf,

a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made:

Provided that, in the case of part-payment of the principal of a debt, the fact of the payment appears in the hand-writing of the person making the same.

Where mortgaged land is in the possession of the mortgagee, the receipt

Effect of receipt of produce of mortgaged land. of the produce of such land shall be deemed to be a payment for the purpose of this section.

21. Nothing in sections 19 and 20 renders one of several joint con-

tractors, partners, executors, or mortgagees chargeable by reason only of a written acknowledgment signed, or of a payment made by, or by the agent of, any other or others of them.

22. When, after the institution of a suit, a new plaintiff or defendant

Effect of substituting or adding new plaintiff or defendant. is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:

Provided that, when a plaintiff dies, and the suit is continued by his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted by the deceased plaintiff. 1877.
Act 15.

Provided also that, when a defendant dies, and the suit is continued against his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted against the deceased defendant.

23. In the case of a continuing breach of contract, and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

24. In the case of a suit for compensation for an act which does not give rise to a cause of action, unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Illustrations.

(a.) A owns the surface of a field. B owns the subsoil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by A against B runs from the time of the subsidence.

(b.) A speaks and publishes of B slanderous words not actionable in themselves without special damages caused thereby. C in consequence refuses to employ B as his clerk. The period of limitation in the case of a suit by B against A for compensation for the slander does not commence till the refusal.

Computation of time mentioned in instruments.

25. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Illustrations.

(a.) A Hindú makes a promissory note bearing a native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiry of four months after date computed according to the Gregorian calendar.

(b.) A Hindú makes a bond, bearing a native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiry of one year after date computed according to the Gregorian calendar.

PART IV.

ACQUISITION OF OWNERSHIP BY POSSESSION.

26.* Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption, and for twenty years,

and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative), has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, way, watercourse, use of water, or other easement, shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

* Sections 26 and 27 are repealed by Act V. of 1882 (Easements) in territories to which Act V. of 1882 extends. All references in any Act or Regulation to the said sections, or to ss. 27 and 28 of Act IX. of 1871, shall, in such territories, be read as made to ss. 15 and 16 of Act V. of 1882.

1877. *Explanation.*—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment, by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to, or acquiesced in, for one year after the claimant has notice thereof, and of the person making or authorizing the same to be made.

Act 15.

Illustrations.

(a.) A suit is brought in 1881 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption from 1st January 1860 to 1st January 1880. The plaintiff is entitled to judgment.

(b.) In a like suit, also brought in 1881, the plaintiff merely proves that he enjoyed the right in manner aforesaid from 1858 to 1878. The suit shall be dismissed, as no exercise of the right by actual user has been proved to have taken place within two years next before the institution of the suit.

(c.) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had asked his leave to enjoy the right. The suit shall be dismissed.

27.* Provided that, when any land or water upon, over, or from which

Exclusion in favour of reversioner of servient tenement.

any easement has been enjoyed or derived, has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that, during ten of these years, C, a Hindú widow, had a life-interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

28. At the determination of the period hereby limited to any person

Extinguishment of right to property.

for instituting a suit for possession of any property, his right to such property shall be extinguished.

THE FIRST SCHEDULE.

Number and year of Acts.	Title.	Extent of Repeal.
X. of 1865 ...	The Indian Succession Act.	In section 321 the words "within two years after the death of the testator, or one year after the legacy has been paid."
IX. of 1871 ...	The Indian Limitation Act, 1871.	The whole.
X. of 1877 ...	The Code of Civil Procedure.	Section 599, and in section 601 the words "within thirty days from the date of the order."

* Sections 26 and 27 are repealed by Act V. of 1882 (Easements) in territories to which Act V. of 1882 extends. All references in any Act or Regulation to the said sections, or to ss. 27 and 28 of Act IX. of 1871, shall, in such territories, be read as made to ss. 15 and 16 of Act V. of 1882.

THE SECOND SCHEDULE.

(See section 4.)

First Division : Suits.

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part I.—Thirty days.</i>	
1.—To contest an award of the Board of Revenue under Act No. XXIII. of 1863 (<i>to provide for the adjudication of claims to waste lands</i>).	Thirty day ...	When notice of the award is delivered to the plaintiff.
	<i>Part II.—Ninety days.</i>	
2.—For compensation for doing, or for omitting to do, an act in pursuance of any enactment in force for the time being in British India.	Ninety days ...	When the act or omission takes place.
	<i>Part III.—Six months.</i>	
3.—Under the Specific Relief Act, 1877, section 9, to recover possession of immoveable property.	Six months ...	When the dispossession occurs.
4.—Under Act No. IX. of 1860 (<i>to provide for the speedy determination of certain disputes between workmen engaged in Railway and other public works and their employers</i>), section one.	Ditto ...	When the wages, hire, or price of work claimed accrue or accrues due.
5.—Under the Code of Civil Procedure, chapter xxxix (<i>of summary procedure on negotiable instruments</i>).	Ditto ...	When the instrument sued upon becomes due and payable.
	<i>Part IV.—One year.</i>	
6.—Upon a Statute, Act, Regulation, or Bye-law, for a penalty or forfeiture.	One year ...	When the penalty or forfeiture is incurred.
7.—For the wages of a household servant, artisan, or labourer, not provided for by this schedule, No. 4.	Ditto ...	When the wages accrue due.
8.—For the price of food or drink sold by the keeper of a hotel, tavern, or lodging-house.	Ditto ...	When the food or drink is delivered.
9.—For the price of lodging ...	Ditto ...	When the price becomes payable.
10.—To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract.	Ditto ...	When the purchaser takes under the sale sought to be impeached, physical possession of the whole of the property sold, or where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.

THE SECOND SCHEDULE—(continued).

First Division : Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
11.—By a person against whom an order is passed under section 280, 281, 282, or 335 of the Code of Civil Procedure to establish his right to, or to the present possession of, the property comprised in the order.	<i>Part IV. (contd.)</i> <i>One year.</i> One year ...	The date of the order.
12.—To set aside any of the following sales :— (a) sale in execution of a decree of a Civil Court ; (b) sale in pursuance of a decree or order of a Collector or other officer of revenue ; (c) sale for arrears of Government revenue, or for any demand recoverable as such arrears ; (d) sale of a patni taluq sold for current arrears of rent.	Ditto	When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.
<i>Explanation.</i> —In this clause 'patni' includes any intermediate tenure saleable for current arrears of rent.		
13.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.	Ditto	The date of the final decision or order in the case by a Court competent to determine it finally.
14.—To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.		
15.—Against Government to set aside any attachment, lease, or transfer of immoveable property by the revenue authorities for arrears of Government revenue.	Ditto	When the attachment, lease, or transfer is made.
16.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears.		
17.—Against Government for compensation for land acquired for public purposes.	Ditto	The date of determining the amount of the compensation.
18.—Like suit for compensation when the acquisition is not completed.		

THE SECOND SCHEDULE—(continued).

First Division : Suits —(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
19.—For compensation for false imprisonment.	<i>Part IV. (contd).— One year.</i> One year ...	When the imprisonment ends.
20.—By executors, administrators, or representatives under Act No. XII. of 1855 (<i>to enable the executors, administrators, or representatives to sue and be sued for certain wrongs</i>).	Ditto ...	The date of the death of the person wronged.
21.—By executors, administrators, or representatives under Act No. XIII. of 1855 (<i>to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong</i>).	Ditto ...	The date of the death of the person killed.
22.—For compensation for any other injury to the person.	Ditto ...	When the injury is committed.
23.—For compensation for a malicious prosecution.	Ditto ...	When the plaintiff is acquitted, or the prosecution is otherwise terminated.
24.—For compensation for libel ...	Ditto ...	When the libel is published.
25.—For compensation for slander ...	Ditto ...	When the words are spoken, or, when the words are not actionable in themselves, when the special damage complained of results.
26.—For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	Ditto ...	When the loss occurs.
27.—For compensation for inducing a person to break a contract with the plaintiff.	Ditto ...	The date of the breach.
28.—For compensation for an illegal, irregular, or excessive distress.	Ditto ...	The date of the distress.
29.—For compensation for wrongful seizure of moveable property under legal process.	Ditto ...	The date of the seizure.
30.—Against a carrier for compensation for losing or injuring goods.	<i>Part V.—Two years.</i> Two years ...	When the loss or injury occurs.
31.—Against a carrier for compensation for delay in delivering goods.	Ditto ...	When the goods ought to be delivered.

THE SECOND SCHEDULE—(continued).

First Division : Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
32.— Against one who, having a right to use property for specific purposes, perverts it to other purposes.	<i>Part V. (contd).—</i> <i>Two years.</i> Two years. ...	When the perversion first becomes known to the person injured thereby.
33.— Under Act No. XII. of 1855 (<i>to enable executors, administrators, or representatives to sue and be sued for certain wrongs</i>) against an executor, administrator, or other representative.	Ditto ...	When the wrong complained of is done.
34.— For the recovery of a wife ...	Ditto ...	When possession is demanded and refused.
35.— For the restitution of conjugal rights.	Ditto ...	When restitution is demanded and is refused by the husband or wife, being of full age and sound mind.
36.— For compensation for any malfeasance, misfeasance, or nonfeasance independent of contract, and not herein specially provided for.	Ditto ...	When the malfeasance, misfeasance, or nonfeasance takes place.
37.— For compensation for obstructing a way or a watercourse.	<i>Part VI.—Three years.</i> Three years. ...	The date of the obstruction.
38.— For compensation for diverting a watercourse.	Ditto ...	The date of the diversion.
39.— For compensation for trespass upon immoveable property.	Ditto ...	The date of the trespass.
40.— For compensation for infringing copyright or any other exclusive privilege.	Ditto ...	The date of the infringement.
41.— To restrain waste.	Ditto ...	When the waste begins.
42.— For compensation for injury caused by an injunction wrongfully obtained.	Ditto ...	When the injunction ceases.
43.— Under the Indian Succession Act, 1865, section 320 or 321, or under the Probate and Administration Act, 1881, section 139 or 140,* to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Ditto ...	The date of the payment or distribution.
44.— By a ward who has attained majority, to set aside a sale by his guardian.	Ditto ...	When the ward attains majority.

* See Act V. of 1881, s. 156.

THE SECOND SCHEDULE—(continued).

First Division : Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI. (contd.) Three years.</i>	
45.—To contest an award under any of the following Regulations of the Bengal Code :— VII. of 1822, IX. of 1825, and IX of 1833.	Three years ...	The date of the final award or order in the case.
46.—By a party bound by such award to recover any property comprised therein.	Ditto ...	The date of the final award or order in the case.
47.—By any person bound by an order respecting the possession of property made under the Code of Criminal Procedure, chapter xl., or the Bombay Māmlatdārs' Courts Act, or by any one claiming under such person, to recover the property comprised in such order.	Ditto ...	The date of the final order in the case.
48.—For specific moveable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same.	Ditto ...	When the person having the right to the possession of the property first learns in whose possession it is.
49.—For other specific moveable property or for compensation for wrongfully taking or injuring or wrongfully detaining the same.	Ditto ...	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.
50.—For the hire of animals, vehicles, boats, or household furniture.	Ditto ...	When the hire becomes payable.
51.—For the balance of money advanced in payment of goods to be delivered.	Ditto ...	When the goods ought to be delivered.
52.—For the price of goods sold and delivered where no fixed period of credit is agreed upon.	Ditto ...	The date of the delivery of the goods.
53.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Ditto ...	When the period of credit expires.
54.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Ditto ...	When the period of the proposed bill elapses.

THE SECOND SCHEDULE—(continued).

First Division : Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI. (contd.)— Three years.</i>	
55.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Three years ...	The date of the sale.
56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Ditto ...	When the work is done.
57.—For money payable for money lent.	Ditto ...	When the loan is made.
58.—Like suit when the lender has given a cheque for the money.	Ditto ...	When the cheque is paid.
59.—For money lent under an agreement that it shall be payable on demand.	Ditto ...	When the loan is made.
60.—For money deposited under an agreement that it shall be payable on demand.	Ditto ...	When the demand is made.
61.—For money payable to the plaintiff for money paid for the defendant.	Ditto ...	When the money is paid.
62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Ditto ...	When the money is received.
63.—For money payable for interest upon money due from the defendant to the plaintiff.	Ditto ...	When the interest becomes due.
64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Ditto ...	When the accounts are stated in writing, signed by the defendant or his agent duly authorized in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.
65.—For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Ditto ...	When the time specified arrives, or the contingency happens.
66.—On a single bond where a day is specified for payment.	Ditto ...	The day so specified.

THE SECOND SCHEDULE—(continued).

First Division : Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>Part VI. (contd.)— Three years.</i>		
67.—On a single bond where no such day is specified.	Three years	... The date of executing the bond.
68.—On a bond subject to a condition.	Ditto	... When the condition is broken.
69.—On a bill of exchange or promissory note payable at a fixed time after date.	Ditto	... When the bill or note falls due.
70.—On a bill of exchange payable at sight, or after sight, but not at a fixed time.	Ditto	... When the bill is presented.
71.—On a bill of exchange accepted payable at a particular place.	Ditto	... When the bill is presented at that place.
72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Ditto	... When the fixed time expires.
73.—On a bill of exchange or promissory note payable on demand, and not accompanied by any writing restraining or postponing the right to sue.	Ditto	... The date of the bill or note.
74.—On a promissory note or bond payable by instalments.	Ditto	... The expiration of the first term of payment, as to the part then payable; and, for the other parts, the expiration of the respective terms of payment.
75.—On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one instalment, the whole shall be due.	Ditto	... When the first default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.
76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Ditto	... The date of the delivery to the payee.
77.—On a dishonoured foreign bill where protest has been made and notice given.	Ditto	... When the notice is given.
78.—By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance.	Ditto	... The date of the refusal to accept.

THE SECOND SCHEDULE—(continued).

First Division : Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI. (contd.)— Three years.</i>	
79.—By the acceptor of an accommodation bill against the drawer.	Three years ...	When the acceptor pays the amount of the bill.
80.—Suit on a bill of exchange, promissory note, or bond not herein expressly provided for.	Ditto ...	When the bill, note, or bond becomes payable.
81.—By a surety against the principal debtor.	Ditto ...	When the surety pays the creditor.
82.—By a surety against a co-surety.	Ditto ...	When the surety pays anything in excess of his own share.
83.—Upon any other contract to indemnify.	Ditto ...	When the plaintiff is actually damnified.
84.—By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Ditto ...	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.
85.—For the balance due on a mutual, open, and current account, where there have been reciprocal demands between the parties.	Ditto ...	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.
86.—On a policy of insurance when the sum assured is payable immediately after proof of the death or loss has been given to or received by the insurers.	Ditto ...	When proof of the death or loss is given or received to or by the insurers, whether by or from the plaintiff or any other person.
87.—By the assured to recover premia paid under a policy voidable at the election of the insurers.	Ditto ...	When the insurers elect to avoid the policy.
88.—Against a factor for an account.	Ditto ...	When the account is, during the continuance of the agency, demanded and refused, or, where no such demand is made, when the agency terminates.
89.—By a principal against his agent for moveable property received by the latter and not accounted for.	Ditto ...	When the account is, during the continuance of the agency, demanded and refused, or, where no such demand is made, when the agency terminates.

THE SECOND SCHEDULE—(continued).

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>Part VI (contd.)— Three years.</i>		
90.—Other suits by principals against agents for neglect or misconduct.	Three years	.. When the neglect or misconduct becomes known to the plaintiff.
91.—To cancel or set aside an instrument not otherwise provided for.	Ditto	... When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.
92.—To declare the forgery of an instrument issued or registered.	Ditto	... When the issue or registration becomes known to the plaintiff.
93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff.	Ditto	... The date of the attempt.
94.—For property which the plaintiff has conveyed while insane	Ditto	... When the plaintiff is restored to sanity, and has knowledge of the conveyance.
95.—To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	Ditto	... When the fraud becomes known to the party wronged.
96.—For relief on the ground of mistake.	Ditto	... When the mistake becomes known to the plaintiff.
97.—For money paid upon an existing consideration which afterwards fails.	Ditto	... The date of the failure.
98.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Ditto	... The date of the trustee's death, or, if the loss has not then resulted, the date of the loss.
99.—For contribution by a party who has paid the whole amount due under a joint decree, or by a sharer in a joint estate who has paid the whole amount of revenue due from himself and his co-sharers.	Ditto	... The date of the plaintiff's advance in excess of his own share.
100.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Ditto	... When the right to contribution accrues.
101.—For a seaman's wages.	Ditto	... The end of the voyage during which the wages are earned.
102.—For wages not otherwise expressly provided for by this schedule.	Ditto	... When the wages accrue due.

THE SECOND SCHEDULE—(continued).

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>Part VI. (contd.)— Three years.</i>		
103.—By a Muhammadan for exigible dower (<i>mu'ajjal</i>).	Three years ...	When the dower is demanded and refused, or (where during the continuance of the marriage no such demand has been made) when the marriage is dissolved by death or divorce.
104.—By a Muhammadan for deferred dower (<i>mu'wajjal</i>).	Ditto ...	When the marriage is dissolved by death or divorce.
105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Ditto ...	When the mortgagor re-enters on the mortgaged property.
106.—For an account and a share of the profits of a dissolved partnership.	Ditto ...	The date of the dissolution.
107.—By the manager of a joint estate of an undivided family for contribution in respect of a payment made by him on account of the estate.	Ditto ...	The date of the payment.
108.—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	Ditto ...	When the trees are cut down.
109.—For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant.	Ditto ...	When the profits are received, or, where the plaintiff has been dispossessed by a decree afterwards set aside on appeal, when he recovers possession.
110.—For arrears of rent.	Ditto ...	When the arrears become due.
111.—By a vendor of immoveable property to enforce his lien for unpaid purchase-money.	Ditto ...	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
112.—For a call by a company registered under any Statute or Act.	Ditto ...	When the call is payable.
113.—For specific performance of a contract.	Ditto ...	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

THE SECOND SCHEDULE—(continued).

First Division : Suits—(continued).

Description of suit,	Period of limitation.	Time from which period begins to run.
114.—For the rescission of a contract.	<i>Part VI. (contd.)— Three years.</i> Three years ...	When the facts entitling the plaintiff to have the contract rescinded first become known to him.
115.—For compensation for the breach of any contract, express or implied, not in writing registered, and not herein specially provided for.	Ditto ...	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.
116.—For compensation for the breach of a contract in writing registered.	<i>Part VII.— Six years.</i> Six years ...	When the period of limitation would begin to run against a suit brought on a similar contract not registered.
117.—Upon a foreign judgment as defined in the Code of Civil Procedure.	Ditto ...	The date of the judgment.
118.—To obtain a declaration that an alleged adoption is invalid, or never in fact took place.	Ditto ...	When the alleged adoption becomes known to the plaintiff.
119.—To obtain a declaration that an adoption is valid.	Ditto ...	When the rights of the adopted son as such are interfered with.
120.—Suit for which no period of limitation is provided elsewhere in this schedule.	Ditto ...	When the right to sue accrues.
121.—To avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue, or in a <i>pattā</i> <i>idāg</i> or other saleable tenure sold for arrears of rent.	<i>Part VIII.— Twelve years.</i> Twelve years ...	When the sale becomes final and conclusive.
122.—Upon a judgment obtained in British India, or a recognizance.	Ditto ...	The date of the judgment or recognizance.
123.—For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate.	Ditto ...	When the legacy or share becomes payable or deliverable.
124.—For possession of an hereditary office.	Ditto ...	When the defendant takes possession of the office adversely to the plaintiff.

THE SECOND SCHEDULE—(continued).

First Division : Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>125.—Suit during the life of a Hindú or Muhammadan female by a Hindú or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her re-marriage.</p> <p>126.—By a Hindú governed by the law of the Mitákshará to set aside his father's alienation of ancestral property.</p> <p>127.—By a person excluded from joint-family property to enforce a right to share therein.</p> <p>128.—By a Hindú for arrears of maintenance.</p> <p>129.—By a Hindú for a declaration of his right to maintenance.</p> <p>130.—For the resumption or assessment of rent-free land.</p> <p>131.—To establish a periodically recurring right.</p> <p>132.—To enforce payment of money charged upon immoveable property.</p>	<p><i>Part VIII. (contd.)</i> —<i>Twelve years.</i></p> <p>Twelve years ...</p> <p>Ditto ...</p> <p>Ditto ...</p> <p>Ditto ...</p> <p>Ditto ...</p> <p>Ditto ...</p> <p>Ditto ...</p> <p>Ditto ...</p> <p>Ditto ...</p>	<p><i>Explanation.</i>—An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.</p> <p>The date of the alienation.</p> <p>When the alienee takes possession of the property.</p> <p>When the exclusion becomes known to the plaintiff.</p> <p>When the arrears are payable.</p> <p>When the right is denied.</p> <p>When the right to resume or assess the land first accrues.</p> <p>When the plaintiff is first refused the enjoyment of the right.</p> <p>When the money sued for becomes due.</p>
<p><i>Explanation</i>—The allowance and fees respectively called <i>málikdā</i> and <i>haggs</i> shall, for the purpose of this clause, be deemed to be money charged upon immoveable property.</p>		
<p>133.—To recover moveable property conveyed or bequeathed in trust, deposited, or pawned, and afterwards bought from the trustee, depository, or pawnee for a valuable consideration.</p>	<p>Ditto ...</p>	<p>The date of the purchase.</p>

THE SECOND SCHEDULE—(continued).

First Division : Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
134.—To recover possession of immoveable property conveyed or bequeathed in trust or mortgaged, and afterwards purchased from the trustee or mortgagee, for a valuable consideration.	<i>Part VIII. (contd).</i> — <i>Twelve years.</i> Twelve years ...	The date of the purchase.
135.—Suit instituted in a Court not established by Royal Charter by a mortgagee for possession of immoveable property mortgaged.	Ditto ...	When the mortgagor's right to possession determines.
136.—By a purchaser at a private sale for possession of immoveable property sold, when the vendor was out of possession at the date of the sale.	Ditto ...	When the vendor is first entitled to possession.
137.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.	Ditto ...	When the judgment-debtor is first entitled to possession.
138.—By a purchaser of land at a sale in execution of a decree, for possession of the purchased land, when the judgment-debtor was in possession at the date of the sale.	Ditto ...	The date of the sale.
139.—By a landlord to recover possession from a tenant.	Ditto ...	When the tenancy is determined.
140.—By a remainderman, a reversioner (other than a landlord) or a devisee, for possession of immoveable property.	Ditto ...	When his estate falls into possession.
141.—Like suit by a Hindú or Muhammadan entitled to the possession of immoveable property on the death of a Hindú or Muhammadan female.	Ditto ...	When the female dies.
142.—For possession of immoveable property, when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Ditto ...	The date of the dispossession or discontinuance.
143.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	Ditto ...	When the forfeiture is incurred or the condition is broken.

THE SECOND SCHEDULE—(continued).

First Division: Suits—(continued).

Description of suit.	Period of limitation.	Time from which period begins to run.
144.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for.	<i>Part VIII. (contd.) —Twelve years.</i> Twelve years ...	When the possession of the defendant becomes adverse to the plaintiff.
145.—Against a depositary or pawnee to recover moveable property deposited or pawned.	<i>Part IX.—Thirty years.</i> Thirty years ...	The date of the deposit or pawn.
146.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged.	Ditto ...	When any part of the principal or interest was last paid on account of the mortgage-debt.
147.—By a mortgagee for foreclosure or sale.	<i>Part X.—Sixty years.</i> Sixty years ...	When the money secured by the mortgage becomes due.
148.—Against a mortgagee to redeem or to recover possession of immoveable property mortgaged.	Ditto ...	When the right to redeem or to recover possession accrues. Provided that all claims to redeem, arising under instruments of mortgage of immoveable property situated in British Burmah, which have been executed before the first day of May 1863, shall be governed by the rules of limitation in force in that province immediately before the same day.
149.—Any suit by or on behalf of the Secretary of State for India in Council.	Ditto ...	When the period of limitation would begin to run under this Act against a like suit by a private person.

THE SECOND SCHEDULE—(continued).

Second Division : Appeals.

Description of appeal.	Period of limitation.	Time from which period begins to run.
150.—Under the Code of Criminal Procedure from a sentence of death passed by a Sessions Judge.	Seven days ...	The date of the sentence.
151.—From a decree or order of any of the High Courts of Judicature at Fort William, Madras, and Bombay, in the exercise of its original jurisdiction.	Twenty days ...	The date of the decree or order.
152.—Under the Code of Civil Procedure to the Court of a District Judge.	Thirty days ...	The date of the decree or order appealed against.
153.—Under the same Code, section 601, to a High Court.	Ditto ...	The date of the order refusing the certificate.
154.—Under the Code of Criminal Procedure to any Court other than a High Court.	Ditto ...	The date of the sentence or order appealed against.
155.—Under the same Code to a High Court except in the cases provided for by No. 150 and No. 157.	Sixty days ...	Ditto.
156.—Under the Code of Civil Procedure to a High Court except in the cases provided for by No. 151 and No. 153.	Ninety days ...	The date of the decree or order appealed against.
157.—Under the Code of Criminal Procedure from a judgment of acquittal.	Six months ...	The date of the judgment appealed against.

Third Division : Applications.

Description of application.	Period of limitation.	Time from which period begins to run.
158.—Under the Code of Civil Procedure to set aside an award.	Ten days ...	When the award is submitted to the Court.
159.—For leave to appear and defend a suit under chapter xxxix. of the Code of Civil Procedure.	Ditto ...	When the summons is served.
160.—For an order under section 629 of the same Code restoring to the file a rejected application for review.	Fifteen days ...	When the application for review is rejected.
161.—For the issue of a notice under section 258 of the same Code to shew cause why the payment or adjustment therein mentioned should not be recorded as certified.*	Twenty days ...	When the payment or adjustment is made.

* See Act XII. of 1879, s. 108.

THE SECOND SCHEDULE—(continued).

Third Division : Applications—(continued).

Description of application.	Period of limitation.	Time from which period begins to run.
162.—For a review of judgment by any of the High Courts of Judicature at Fort William, Madras, and ^a Bombay, in the exercise of its original jurisdiction.	Twenty days ...	The date of the decree or order.
163.—By a plaintiff for an order to set aside a dismissal by default.	Thirty days ...	The date of the dismissal.
164.—By a defendant for an order to set aside a judgment <i>ex parte</i> .	Ditto ...	The date of executing any process for enforcing the judgment.
165.—Under the Code of Civil Procedure, by a person dispossessed of immoveable property, and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	Ditto ...	The date of the dispossession.
166.—To set aside a sale in execution of a decree, on the ground of irregularity in publishing or conducting the sale, or on the ground that the decree-holder has purchased without the permission of the Court.*	Ditto ...	The date of the sale.
167.—Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree or of dispossession in the delivery of possession to the decree-holder or the purchaser of such property.	Ditto ...	The date of the resistance, obstruction, or dispossession.
168.—For re-admission of an appeal dismissed for want of prosecution.	Ditto ...	The date of the dismissal.
169.—For a re-hearing of an appeal heard <i>ex parte</i> in the absence of the respondent.	Ditto ...	The date of the decree in appeal.
170.—For leave to appeal as a pauper.	Ditto ...	The date of the decree appealed against.
171.—Under section 363 or 365 of the Code of Civil Procedure by a person claiming to be the legal representative of a deceased plaintiff or appellant.*	Sixty days ...	The date of the plaintiff's or appellant's death.

* See Act XII. of 1879, s. 108.

THE SECOND SCHEDULE—(continued).

Third Division : Applications—(continued).

Description of application.	Period of limitation.	Time from which period begins to run.
*171A.—Under section 366 of the same Code, by the defendant	Sixty days	... The sixtieth day from the date of the plaintiff's death.†
*171B.—Under section 368 of the same Code, to have the representative of a deceased defendant made a defendant.	Ditto	... The date of the defendant's death.
*171C.—Under section 371 of the same Code, for an order to set aside an order for abatement or dismissal.	Ditto	... The date of the order for abatement or dismissal.
172.—By a purchaser at an execution-sale to set aside the sale on the ground that the person whose interest in the property purported to be sold had no saleable interest therein.	Ditto	... The date of the sale.
173.—For a review of judgment, except in the cases provided for by No. 162.	Ninety days	... The date of the decree or order.
174.—By a creditor of an insolvent judgment-debtor under section 353 of the Code of Civil Procedure.	Ditto	... The date of the publication of the schedule.
175.—For payment of the amount of a decree by instalments.	Six months	... The date of the decree.
176.—Under the Code of Civil Procedure, section 516 or 525, that an award be filed in Court.	Ditto	... The date of the award.
177.—For the admission of an appeal to Her Majesty in Council.	Ditto	... The date of the decree appealed against.
178.—Application for which no period of limitation is provided elsewhere in this schedule, or by the Code of Civil Procedure, section 230.	Three years	... When the right to apply accrues.
179.—For the execution of a decree or order of any Civil Court not provided for by No. 180 or by the Code of Civil Procedure, section 230.	Ditto ; or, where a certified copy of the decree or order has been registered, six years.	1. The date of the decree or order, or 2. (where there has been an appeal) the date of the final decree or order of the Appellate Court, or 3. (where there has been a review of judgment) the date of the decision passed on the review, or 4. (where the application next hereinafter mentioned has been made)

THE SECOND SCHEDULE—(continued).

Third Division : Applications—(continued).

Description of application.

Time from which period
begins to run.

the date of applying in accordance with law to the proper Court for execution, or to take some step in aid of execution of the decree or order, or

5. (where the notice next hereinafter mentioned has been issued) the date of issuing a notice under the Code of Civil Procedure, section 248, or
6. (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date.^a

Explanation 1.—Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 4 of this Number shall take effect in favour only of such of the said persons or their representatives as it may be made by. But when the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all.

Where the decree or order had been passed, severally, against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application

THE SECOND SCHEDULE—(concluded).

Third Division : Applications—(concluded).

Description of application.	Period of limitation.	Time from which period begins to run.
<p>180.—To enforce a judgment, decree, or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of Her Majesty in Council.</p>	<p>Twelve years</p>	<p>shall take effect against only such of the said persons or their representatives as it may be made against. But where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them, or against his or their representatives, shall take effect against them all.</p> <p><i>Explanation II.</i>—"Proper Court" means the Court whose duty it is (whether under section 226 or 227 of the Code of Civil Procedure or otherwise) to execute the decree or order.</p> <p>When a present right to enforce the judgment, decree, or order accrues to some person capable of releasing the right : Provided that when the judgment, decree, or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing, signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment, or acknowledgment, or the latest of such revivors, payments, or acknowledgments, as the case may be.</p>

LUNACY—MOFUSSIL COURTS. ACT. NO. XXXV. OF 1858.

RECEIVED THE G.-G.'s ASSENT ON THE 14TH SEPTEMBER 1858.

*An Act to make better provision for the care of the estates of Lunatics not subject to the jurisdiction of the Supreme Courts of Judicature.**

WHEREAS it is expedient to make better provision for the care of the estates of lunatics not subject to the jurisdiction of the Supreme Courts of Judicature; and to prescribe general rules by which the state of mind of persons not subject to such jurisdiction, who are alleged to be lunatic, may be enquired into and ascertained; It is enacted as follows:—

1. [*Repealed by Act XIV. of 1870.*]

2. Whenever any person not subject to the jurisdiction of the Supreme Courts, who is possessed of property, is alleged to be a lunatic, the Civil Court within whose jurisdiction such person is residing† may, upon application as is hereinafter mentioned, institute an enquiry for the purpose of ascertaining whether such person is or is not of unsound mind and incapable of managing his affairs.

3. Application for such enquiry‡ may be made by any relative of the alleged lunatic, or by any public curator appointed under Act XIX. of 1841, or by the Government Pleader, or, if the property of the alleged lunatic consist in whole or in part of land or any interest in land, by the Collector of the district in which it is situate. If the property, or any part thereof, be of such a description as by the law in force in any Presidency where such property is situate would subject the proprietor, if disqualified, to the superintendence of the Court of Wards, the application may be made by the Collector on behalf of the Court of Wards.

4. When the Civil Court is about to institute any such enquiry as aforesaid, it shall cause notice to be given to the alleged lunatic of the time and place at which it is proposed to hold the enquiry. If it shall appear that the alleged lunatic is in such a state that personal service on him would be ineffectual, the Court may direct such substituted service of the notice as it shall think proper. The Court may also direct a copy of such notice to be served upon any relative of the alleged lunatic.

5. The Civil Court may require the alleged lunatic to attend at such convenient time and place as it may appoint for the purpose of being personally examined by the Court, or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic.§ The Court may likewise make an

* Declared to apply to the whole of British India, except the Scheduled Districts, by Act XV. of 1874.

† 2 B. L. R., A. C. J., 246.

‡ The application must be verified.—7th Suth. W. R., C. R., 267.

§ See 7 Suth. W. R., C. R., 246.

1858. order authorizing any person or persons therein named to have access to the alleged lunatic for the purpose of a personal examination.

Act 35.

6. The attendance and examination of the alleged lunatic under the provisions of the last preceding section shall, if the alleged lunatic be a woman who, according to the manners and customs of the country, ought not to be compelled to appear in public, be regulated by the rules in force for the examination of such persons in other cases.

7. The Civil Court, if it think fit, may appoint two or more persons to act as assessors to the Court in the said enquiry. Upon the completion of the enquiry, the Court shall determine whether the alleged lunatic is or is not of unsound mind, and may make such order as to the payment of the costs of the enquiry by the person upon whose application it was made, or out of the estate of the alleged lunatic, if he be adjudged to be of unsound mind, or otherwise, as it may think proper.

8. If the alleged lunatic reside at a distance of more than fifty miles from the place where the Civil Court to which the application shall have been made is held, the said Court may issue a commission to any subordinate Court to make the enquiry, and thereupon the said subordinate Court shall conduct the enquiry in the manner hereinbefore provided. On the completion of the enquiry, the subordinate Court shall report its proceedings, with the opinions of the assessors, if assessors have been appointed, and its own opinion on the case; and thereupon the Civil Court shall make such order in the case as it thinks proper.*

9. When a person has been adjudged to be of unsound mind and incapable of managing his affairs, if the estate of such person or any part thereof consist of property which by the law in force in any Presidency subjects the proprietor, if disqualified, to the superintendence of the Court of Wards, the Court of Wards shall be authorized to take charge of the same. In all other cases, except as otherwise hereinafter provided, the Civil Court shall appoint a manager of the estate. Any near relative of the lunatic or the public curator, or, if there be no public curator, any other suitable person, may be appointed manager.†

10. Whenever a manager of the estate of a lunatic is appointed by the Civil Court, the Court shall appoint a fit person to be guardian of the person of the lunatic. The manager, unless he be the public curator, may be appointed guardian: Provided always that the legal heir of the lunatic shall not, in any case, be appointed guardian of his person.

11. If the estate consist in whole or in part of land or any interest in land not subject to the jurisdiction of the Court of Wards, the Civil Court, instead of appointing a manager, may direct the Collector to take charge of the estate, and thereupon the Collector shall

* The Act contemplates only the question of lunacy or sanity at the time of the inquiry. There is no provision that the inquiry shall extend to the ascertainment of the period at which the alleged lunatic first became of unsound mind.—*Ajodhya Prasad Singh v. Umrao Singh*, 6 B. L. R. 509, 517.

† See 4 B. L. R. App. 24.

1859.

Act 35.

appoint a manager of the property and a guardian of the person of the lunatic. All the proceedings of the Collector in the charge of estates under this Act shall be subject to the control of the superior revenue-authorities.*

12. If the person appointed to be manager of the estate of a lunatic, or

Remuneration of managers and guardians. the person appointed to be guardian of a lunatic's person, shall be unwilling to discharge the trust

gratuitously, the Court or the Collector, as the case may be, may fix such allowance or allowances, to be paid out of the estate of the lunatic, as, under the circumstances of the case, may be thought suitable.

13. The person appointed to be guardian of a lunatic's person shall have the care of his person and maintenance. When

Duties of guardian.

a distinct guardian is appointed, the manager shall pay to the guardian such allowance as shall be fixed by the Court or the Collector, as the case may be, for the maintenance of the lunatic and of his family.

14. Every manager of the estate of a lunatic appointed as aforesaid may,

Power of managers.

exercise the same powers in the management of the estate as might have been exercised by the proprietor, if not a lunatic; and may collect and pay all just claims, debts, and liabilities due to or by the estate of the lunatic. But no such manager shall have power to sell or mortgage the estate, or any part thereof, or to grant a lease of any immoveable property for any period exceeding five years, without an order of the Civil Court previously obtained.

15. Every person appointed by the Civil Court or by the Collector to be

Managers to furnish inventory and annual accounts. Proceeding if accuracy of inventory or accounts be impugned.

manager of the estate of a lunatic shall, within six months from the date of his appointment, deliver in Court or to the Collector, as the case may be, an inventory of the landed property belonging to the lunatic, and of all such sums of money, goods, and effects, as he shall receive on account of the estate, together with a statement of all debts due by or to the same. And every such manager shall furnish to the Court or the Collector annually, within three months of the close of the year of the era current in the district, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate, and the balance remaining in his hands. If any relative of the lunatic, or any public officer, by petition to the Court, shall impugn the accuracy of the said inventory and statement, or of any annual account, the Court may summon the manager and enquire summarily into the matter, and make such order thereon as it shall think proper; or the Court, at its discretion, may refer any such petition to any subordinate Court, or to the Collector if the manager was appointed by the Collector.

16. All sums received by a manager on account of any estate in excess

Manager to pay proceeds of estates into the public treasury.

of what may be required for the current expenses of the lunatic or of the estate shall be paid into the public treasury on account of the estate, and may be invested from time to time in the public securities.

17. It shall be lawful for any relative of a lunatic to sue for an account

Relative may sue for an account.

from any manager appointed under this Act, or from any such person after his removal from office or trust, or from his personal representative in case of his death, in respect of

1858. any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate.

Act 35.

18. The Civil Court, for any sufficient cause, may remove any manager appointed by the Court, not being a public curator, and may appoint such curator or any other fit person in his room, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all moneys received or disbursed by him. The Court may also, for any sufficient cause, remove any guardian appointed by the Court. In like manner, the Collector, for any sufficient cause, may remove any manager or guardian appointed by the Collector; and the Court, on the application of the Collector, shall compel any manager so removed to deliver his accounts and the property in his hands.

19. The Civil Court may impose a fine not exceeding 500 rupees on any manager of the estate of a lunatic; who wilfully neglects or refuses to deliver his accounts or any property in his hands within the prescribed time or a time fixed by the Court, and may realize such fine by attachment and sale of his property under the rules in force for the execution of decrees of Court, and may also commit the recusant to close custody until he shall deliver such accounts or property.

Manager refusing to furnish accounts may be fined by the Court, &c.

20. If it appears to the Civil Court, having regard to the situation and condition in life of the lunatic and his family, and the account and description of his property, to be unnecessary to appoint a manager of the estate as hereinbefore provided, the Court may, instead of appointing such manager, order that the property, if money, or if of any other description the produce thereof, when realized, be paid to such person as the Court may think fit, to be applied for the maintenance of the lunatic and his family.

21. When any person has been adjudged to be of unsound mind and incapable of managing his affairs, if such person, or any other person acting on his behalf, or having or claiming any interest in respect of his estate, shall represent by petition to the Civil Court, or if the Court shall be informed in any other manner, that the unsoundness of mind of such person has ceased, the Court may institute an enquiry for the purpose of ascertaining whether such person is or is not still of unsound mind and incapable of managing his affairs. The enquiry shall be conducted in the manner provided in section 4 and the four following sections of this Act; and if it be adjudged that such person has ceased to be of unsound mind and incapable of managing his affairs, the Court shall make an order for his estate to be delivered over to him, and such order shall be final.

22. Except as otherwise herein provided, all orders made by a Civil Court, or by any subordinate Court under this Act, shall be open to appeal under the rules in force for appeals in miscellaneous cases.

Orders appealable.

23. The word "lunatic," as used in this Act, unless the contrary appears from the context, shall mean every person found by due course of law to be of unsound mind and incapable of managing his affairs. The expression "Civil Court" shall mean the principal Court of original jurisdiction in the district. Words importing the masculine gender shall include females.

Interpretation-clause.

LUNACY—SUPREME COURTS.

ACT NO. XXXIV. OF 1858.

RECEIVED THE G.-G.'s ASSENT ON THE 14TH SEPTEMBER 1858.

*An Act to regulate proceedings in Lunacy in the Courts of Judicature established by Royal Charter.**

WHEREAS the several Courts of Judicature established by Royal Charters within the British territories in India are authorized and empowered by their respective

Preamble.

Charters to appoint guardians and keepers of the persons and estates of lunatics, and to inquire into, hear, and determine questions of alleged lunacy by inspection of the person, or by such other ways and means by which the truth may best be discovered and known; and whereas, according to the practice of the said Courts, questions of alleged lunacy are determined by inquisition taken before a jury, and it is expedient to lessen the cost and to alter the mode of enquiry into such questions, and also to empower the said Courts to make provision for the due management of the estates of lunatics; † It is enacted as follows :—

1. It shall be lawful for any of the said Courts of Judicature, on

Court may order enquiry as to persons alleged to be insane.

who is alleged to be lunatic, is or is not of unsound mind and incapable of managing himself and his affairs. ‡ The order may also contain directions

Order may direct enquiry concerning property, &c., of lunatic.

during which he has been of unsound mind, or such other matters as to the Court shall seem proper.

such application as is hereinafter mentioned, to make an order directing an enquiry whether any person subject to the jurisdiction of the Court, for other enquiries concerning the nature of the property belonging to the alleged lunatic, the persons who are his relatives or next-of-kin, the time

2. Application for such enquiry may be made by any persons related

Application by whom to be made.

by blood or marriage to the alleged lunatic, or by the Advocate-General.

3. The order made by the Court upon such application shall direct

Ordinarily, enquiry to be by the Court.

Enquiry by Judge in chambers.

the enquiry to be by the Court itself. It shall nevertheless be lawful for the Court, if it see sufficient cause for so doing, to direct the enquiry to be executed in chambers before a single Judge of the Court.

Reasonable notice of the time and place appointed for the enquiry

Notice of enquiry to be given to lunatic.

Service of notice: that personal service on him would be ineffectual, the Court may direct such substituted service of the notice as it

shall be given to the alleged lunatic. If it shall appear that the alleged lunatic is in such a state

* Founded, to some extent, on 16, 17 Vic., c. 70 (the Lunacy Regulation Act, 1853).

† See Bengal Act IV. of 1870, s. 25.

‡ *Re Arathoon*, 2 Boul. 74; *Ridgeway v. Darwin*, 8 Ves. 65.

1858. shall think proper. The Court may also, if it think fit, direct a copy of such notice to be served upon any person related by blood or marriage to the alleged lunatic.

Act 34.

If the enquiry is directed to be executed before a single Judge, it shall be lawful for the alleged lunatic, at any time before the day fixed for the enquiry, to demand an enquiry before the full Court. In such case the enquiry shall be by the Court, and a further day shall be appointed for making such enquiry; and in such case the Court may direct such further notices (if any) to be given as it may think requisite.

4. The Court may, at any time after the application, require the alleged lunatic to attend at such convenient time and place, within twenty miles of the place of residence of the said lunatic, as it may appoint, for the purpose of being personally examined by the Court or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic.

Power to require attendance of lunatic for the purpose of being personally examined.

5. The Court may likewise, at any time after the application for such enquiry, make an order authorizing any person or persons to be therein named, to have access to the alleged lunatic for the purpose of a personal examination.

Power to authorize persons to have access to lunatic.

6. The attendance and examination of the alleged lunatic under the provisions of the two last preceding sections shall, if the alleged lunatic be a woman who, according to the custom and manners of the country, ought not to be compelled to appear in public, be regulated by the rules in force for the examination of such persons in other cases.

Rules respecting attendance and examination where lunatic is a woman of rank.

7. If the enquiry is made by a Judge of the Court, the Judge executing the enquiry shall, while so employed, have power (subject to the provisions of the last preceding section) personally to examine the alleged lunatic, and take such evidence, on oath or otherwise, and call for such information, as he may think fit or the said Court may direct in order to ascertain whether the alleged lunatic is or is not of unsound mind, and shall have the like powers and authority as are or may be vested by law in a Judge or Master of the said Court* for the investigation of matters referred to them by the Court.

Powers of Judge executing the enquiry.

The Judge shall report to the Court the result of the enquiry.

Judge to report.

8. If the alleged lunatic be not within the local limits of the jurisdiction of the Court, and the enquiry cannot conveniently be made in either of the modes hereinbefore provided, the Court may direct the enquiry to be made before any principal Court of original jurisdiction in civil cases within whose local jurisdiction the alleged lunatic may be; and such last mentioned Court shall accordingly proceed to make such enquiry in the same manner as if the alleged lunatic were subject to its jurisdiction, and shall certify its finding upon the matters of enquiry to the Court directing the enquiry.

Power to direct enquiry by principal Civil Court of original jurisdiction within whose local jurisdiction lunatic may be.

The evidence taken upon the enquiry shall be recorded by the Court in the English language in the form of a narrative, and a copy thereof, certified

* See Act XVIII. of 1863, s. 5.

by the Court, shall be transmitted, together with any remarks the Court may think fit to make thereon, to the Court by which the enquiry was directed. 1859.
Act 34.

9. If the report of the Judge or the finding of a Court under the last preceding section appear to the Court directing the enquiry to be defective or insufficient in point of form, it shall be lawful for such last-mentioned Court either to amend the same, or to refer it back to the Judge, or the Court which made the enquiry, to be amended.

10. It shall be lawful for the Court, on the application of the person at whose instance the order directing an enquiry was made, or on the application of the alleged lunatic, or of any of his relatives authorized by the Court to make the application, to direct a new trial of the matters of enquiry according to the usual course and practice of the Court in directing new trials in civil cases. If such application be granted in a case tried by a single Judge, the order granting the same shall direct the enquiry to be made by the full Court. If the application be granted in a case tried under section 8, the Court directing the new trial may give such directions regarding the same as it shall see fit.

11. The Court shall make such order as may appear just respecting the costs of any enquiry under this Act, and may include therein such remuneration to physicians and surgeons as the Court, having regard to the nature of the enquiry, shall deem reasonable.

12. If no new trial be directed, the finding of the Court to which the application for enquiry was made, if the enquiry have been made by such Court, or the report of the Judge, or the finding of the Court to which the enquiry may have been referred under the provisions of section 8, as the case may be, shall be of the same force and effect, and be proceeded on in the same manner in regard to the appointment of committees of the person and estate of the lunatic, as the inquisition now according to practice taken upon the oath of a jury.

13. It shall be lawful for the Court, on the appointment of committees of the person and estate of a lunatic, to direct, by the order of appointment, or by any subsequent order, that the person to whom the charge of the estate is committed shall have such powers for the management thereof as to the Court shall seem necessary and proper, reference being had to the nature of the property, whether moveable or immovable, of which the estate may consist. But such powers shall not extend to the sale or charge by way of mortgage of the estate or any part thereof, or to the letting of any immoveable property, unless for a term not exceeding three years.

14. The Master of the Court* shall be at liberty, without an order of reference, to receive any proposal and conduct any enquiry respecting the management of the estate of a lunatic, if such proposal relate to any matter which the committee of the estate has not been empowered by an order under the last preceding section to dispose of. The Master may likewise, without reference, receive and enquire into any propo-

* See s. 31 *infra*, and Act XVIII. of 1863, s. 5.

1858. sal relating to the sale or charge by way of mortgage of the estate or of any
 Act 34. part thereof, or to the letting of any immoveable property for a term ex-
 ceeding three years.

15. The Master shall report to the Court on the proposal ; and the Court shall, subject to the provisions of this Act, make the report of the Master. such order upon the report, and respecting the costs, as shall, under the circumstances, seem just.

16. The Court or the Master shall once in the matter of each lunacy, and may afterwards from time to time, determine whether any one or more and (if any) how many and which of the relatives or next-of-kin shall attend before the Master, at the cost of the estate, in any proceeding connected with the management thereof ; and, if any such relative or next-of-kin is an infant, may, from time to time, appoint a fit person to be his guardian for the purposes of the lunacy.

17. The Court may, on application made to it by petition concerning any matter whatsoever connected with the lunacy, make such order, subject to the provisions of this Act, respecting the application and the costs thereof, and of the consequent proceedings, as shall, under the circumstances, seem just.

18. The Court may, if it appears to be just, or for the lunatic's benefit, order that any property, moveable or immoveable, of the lunatic, and whether in possession, reversion, remainder, contingency, or expectancy, be sold or charged by way of mortgage, or otherwise disposed of, as may seem most expedient, for the purpose of raising money to be applied for any of the following purposes :—

1. The payment of the lunatic's debts, including any debt incurred for his maintenance or otherwise for his benefit :

2. The discharge of any incumbrance on his estate :

3. The payment of, or provision for, the expenses of his future maintenance and the maintenance of his family, including the expenses of his removal to Europe, when he shall be so removed, and all expenses incidental thereto :

4. The payment of the costs of any enquiry under this Act, and of any costs incurred by order or under the authority of the Court.

19. The committee of the lunatic's estate shall, in the name and on behalf of the lunatic, execute all such conveyances and instruments of transfer relative to any sale, mortgage, or other disposition of his estate as the Court shall order. In like manner such committee shall, under the order of the Court, exercise all powers whatsoever vested in a lunatic, whether the same are vested in him for his own benefit or in the character of trustee or guardian.

20. Where a person, having contracted to sell or otherwise dispose of his estate or any part thereof, afterwards becomes a lunatic, the Court may, if the contract is such as the Court thinks ought to be performed, direct the committee of the estate to execute such conveyances and to do such other acts in fulfilment of the contract as it shall think proper.

1858.
Act 34.

21. If a member of a partnership firm be found lunatic, the Court may, on the application of the other partners, or of any person who appears to the Court to be entitled to require the same, dissolve the partnership; and thereupon, or upon a dissolution by decree of Court or otherwise by due course of law, the committee of the estate may, in the name and on behalf of the lunatic, join with the other partners in disposing of the partnership property upon such terms, and shall do all such acts for carrying into effect the dissolution of the partnership, as the Court shall think proper.

22. Where a lunatic has been engaged in business, the Court may, if it appear to be for the lunatic's benefit that the business premises should be disposed of, order the committee of the estate to sell and dispose of the same; and the moneys arising from such sale shall be applied in such manner as the Court shall direct.

23. Where a lunatic is entitled to a lease or under-lease, and it appears to be for the benefit of his estate that it should be disposed of, the committee of the estate may, by order of the Court, surrender, assign, or otherwise dispose of the same to such person for such valuable or nominal consideration, and upon such terms, as the Court shall think fit.

24. If a lunatic is possessed of any landed property situate beyond the local limits of the jurisdiction of the Court which, by the law in force in the presidency wherein such land is situated, subjects the proprietor, if disqualified, to the superintendence of the Court of Wards, the said Court of Wards may assume the charge of such landed property, and manage the same according to the rules for the time being in force for such management.

Provided that, in such case, no further proceedings in respect of the lunacy shall be taken under any such law, nor shall it be competent to the Court of Wards or to any Collector to appoint a guardian of the person of the said lunatic or a manager of the estate except of the landed property which so subjects the proprietor as aforesaid.

Provided also that the surplus of the income of such landed property, after providing for the discharge of the Government revenue and expenses of management, shall be disposed of from time to time in such manner as the Supreme Court shall direct, and not otherwise.

Provided further that nothing contained in this section shall affect the powers given to the Supreme Court by sections 18, 19, and 20 of this Act, or (except so far as relates to the management of the said landed property which so subjects the proprietor as aforesaid) the powers given by any other section of this Act.

25. Where any stock or Government securities, or any share in a Company (transferable within the said territories, or the dividends of which are payable there), is standing in the name of, or is vested in, a lunatic beneficially entitled thereto, or in a committee of the estate of a lunatic, or in a trustee for him, and the committee dies intestate, or himself becomes lunatic, or is out of the jurisdiction of the Court, or it is uncertain whether the committee be living or dead, or he neglects or refuses to transfer the stock, securities, or shares, or to receive and pay the

1858. dividends to a new committee or as he directs within fourteen days after being required by him to do so, then the Court may order some fit person to make such transfer, or to transfer the same, and to receive and pay over the dividends in such manner as the Court may direct, and such transfer or payment shall be valid and effectual for all purposes.

Act 34.

26. Where any such stock or Government securities or share in a Company is standing in the name of, or vested in, any person residing out of the said territories, and not in any part of the United Kingdom, the Court, upon being satisfied that such person has been declared of unsound mind, and that his personal estate has been vested in a curator or manager, according to the laws of the place where he is residing, may order some fit person to make such transfer of the stock, securities, or shares, or of any part thereof, to such curator or manager or otherwise, and also to receive and pay over the dividends and proceeds, as the Court may think fit; and any act done in pursuance of such order shall be valid and effectual for all purposes.

Stock of lunatic, residing out of India, and not within the United Kingdom, may be ordered to be transferred.

27. If it appears to the Court, having regard to the situation and condition in life of the lunatic and his family and the other circumstances of the case, to be expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner, it may, instead of appointing a committee of the estate, order that the property if money, or if of any other description the produce thereof, when realized, be paid to such person as the Court may think fit, to be applied for the purpose aforesaid; and all payments so made shall be a good discharge to the person making the same.

Power to apply property for lunatic's maintenance without appointing committee.

28. If it appears to the Court that the unsoundness of mind of a lunatic is in its nature temporary, and that it is expedient to make temporary provision for his maintenance or for the maintenance of his family, the Court may, in like manner as under the last preceding section, direct his property, or a sufficient part of it, to be applied for the purpose aforesaid.

Like power in case of temporary lunacy.

29. When any person has been found of unsound mind, and it shall be shown to the Court, either on the application of such person or of any other person acting on his behalf, or on the information of any other person, that there is reason to believe that such unsoundness of mind has ceased, the Court may make an order for enquiry whether such person is or is not still of unsound mind and incapable of managing himself and his affairs.

Proceedings in lunacy to cease or be set aside if Court find that the unsoundness of mind has ceased.

The enquiry shall be conducted in the same manner and subject to the same rules as are hereinbefore prescribed for an enquiry into the unsoundness of mind of an alleged lunatic; and if it be found that the unsoundness of mind has ceased, the Court shall order all proceedings in the matter of the lunacy to cease or to be set aside on such terms and conditions as under the circumstances of the case shall appear proper.

30. The Court may, from time to time, make such orders, not inconsistent with the provisions of this Act, as shall seem meet for carrying into effect the purposes of this Act, and for regulating the mode of proceeding before the Court, or before a Judge of the Court, or the Master, in matters of lunacy.

Power to make general orders.

31. Every power given by this Act to the Master of any of the said 1858.
 Powers of Master exer- Courts may also be exercised by a Judge of any of
 ciseable by Judge. the said Courts. Act 34.

32. Unless the contrary appears from the context, the word "lunatic,"
 Interpretation-clause. as used in this Act, shall mean any person found
 by due course of law to be of unsound mind and
 incapable of managing his affairs. Words importing the singular number
 shall include the plural number, and words importing the plural number shall
 include the singular. Words importing the masculine gender shall include
 females.

INDIAN MAJORITY ACT, NO. IX. OF 1875.

RECEIVED THE G.-G.'s ASSENT ON THE 2ND MARCH 1875.

An Act to amend the Law respecting the age of majority.

Preamble. WHEREAS, in the case of persons domiciled in British India, it is expedient to prolong the period of nonage, and to attain more uniformity and certainty respecting the age of majority than now exists; It is hereby enacted as follows:—

Short title. 1. This Act may be called “The Indian Majority Act, 1875.”

Local extent. It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty;

Commencement and operation. and it shall come into force and have effect only on the expiration of three months from the passing thereof.

Savings. 2. Nothing herein contained shall affect—

(a) the capacity of any person to act in the following matters (namely),—Marriage, Dower, Divorce, and Adoption;

(b) the religion or religious rites and usages of any class of Her Majesty's subjects in India; or

(c) the capacity of any person who before this Act comes into force has attained majority under the law applicable to him.

3. Subject as aforesaid, every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards, shall, notwithstanding anything contained in the Indian Succession Act (No. X. of 1865) or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before.

Subject as aforesaid, every other person domiciled in British India shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before.

4. In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of section three, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of section three, at the beginning of the eighteenth anniversary of that day.

Illustrations.

(a.) Z is born in British India on the first day of January 1850, and has a British Indian domicile. A guardian of his person is appointed by a Court of Justice. Z attains majority at the first moment of the first day of January 1871.

1875.**Act 9.**

(b.) Z is born in British India on the twenty-ninth day of February 1852, and has a British Indian domicile. A guardian of his property is appointed by a Court of Justice. Z attains majority at the first moment of the twenty-eighth day of February 1873.

(c.) Z is born on the first day of January 1850. He acquires a domicile in British India. No guardian is appointed of his person or property by any Court of Justice, nor is he under the jurisdiction of any Court of Wards. Z attains majority at the first moment of the first day of January 1868.

MARRIED WOMEN'S PROPERTY ACT, NO. III. OF 1874.

RECEIVED THE G.-G.'s ASSENT ON THE 24TH FEBRUARY 1874.

An Act to explain and amend the law relating to certain Married Women and for other purposes.

WHEREAS it is expedient to make such provision as hereinafter appears
Preamble. for the enjoyment of wages and earnings by women married before the first day of January 1866, and for insurances on lives by persons married before or after that day :

And whereas by the Indian Succession Act, 1865, section four, it is enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done, if unmarried :

And whereas by force of the said Act all women to whose marriages it applies are absolute owners of all property vested in, or acquired by, them, and their husbands do not by their marriage acquire any interest in such property, but the said Act does not protect such husbands from liabilities on account of the debts of their wives contracted before marriage, and does not expressly provide for the enforcement of claims by or against such wives ;

It is hereby enacted as follows :—

I.—Preliminary.

Short title. 1. This Act may be called "The Married Women's Property Act, 1874."

2. It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty.
Extent and application.

But nothing herein contained applies to any married woman who at the time of her marriage professed the Hindú, Muhammadan, Buddhist, Síkh, or Jaina religion, or whose husband, at the time of such marriage, professed any of those religions.

And the Governor-General in Council may from time to time, by order, either retrospectively from the passing of this Act or prospectively, exempt from the operation of all or any of the provisions of this Act the members of any race, sect, or tribe, or part of a race, sect, or tribe, to whom he may consider it impossible or inexpedient to apply such provisions.

The Governor-General in Council may also revoke any such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations under this section shall be published in the *Gazette of India*.

The fourth section of the said Indian Succession Act shall not apply, and shall be deemed never to have applied, to any marriage one or both of the parties to which professed, at the time of the marriage, the Hindú, Muhammadan, Buddhist, Síkh, or Jaina religion.

3. [Repealed by Act XII. of 1876.]

1874.

II.—*Married Women's Wages and Earnings.*

Act 3.

4. The wages and earnings of any married woman acquired or gained by her after the passing of this Act, in any employment, occupation, or trade carried on by her, and not by her husband,

and also any money or other property so acquired by her through the exercise of any literary, artistic, or scientific skill,

and all savings from and investments of such wages, earnings, and property,

shall be deemed to be her separate property, and her receipts alone shall be good discharges for such wages, earnings, and property.*

III.—*Insurances by Wives and Husbands.*

5. Any married woman may effect a policy of insurance on her own be half and independently of her husband; and the same and all benefit thereof, if expressed on the face of it to be so effected, shall enure as her separate property, and the contract evidenced by such policy shall be as valid as if made with an unmarried woman.†

6. A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate.

When the sum secured by the policy becomes payable, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the Presidency in which the office at which the insurance was effected is situate, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing.

And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court under Act No. XVII. of 1864 (*to constitute an Office of Official Trustee*), section ten.‡

Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors.

IV.—*Legal Proceedings by and against Married Women.*

7. A married woman may maintain a suit in her own name for the recovery of property of any description which, by force of the said Indian Succession Act, 1865, or of this Act, is her separate property: and she shall have, in her own name, the same remedies, both civil and criminal, against all persons, for the protection and security of such property, as if she were unmarried, and she shall be liable to such suits, processes, and orders in respect of such property as she would be liable to if she were unmarried.§

* See 33 & 34 Vic., c. 1.

† *Ibid.*, s. 10, para. 1.

‡ 33 & 34 Vic., c. 1, s. 10, para. 2.

§ *Ibid.*, s. 11.

1874.
Act 3.

8. If a married woman (whether married before or after the first day of January 1866) possesses separate property, and if any person enters into a contract with her with reference to such property, or on the faith that her obligation arising out of such contract will be satisfied out of her separate property, such person shall be entitled to sue her, and, to the extent of her separate property, to recover against her whatever he might have recovered in such suit had she been unmarried at the date of the contract and continued unmarried at the execution of the decree :*

Provided that nothing herein contained shall affect the liability of a husband for debts contracted by his wife's agency, express or implied, or render a married woman liable to arrest or to imprisonment in execution of a decree.

V.—Husband's Liability for Wife's Debts.

9. A husband married after the thirty-first day of December 1865 shall not, by reason only of such marriage, be liable to the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and shall, to the extent of her separate property, be liable to satisfy such debts as if she had continued unmarried :†

Provided that nothing contained in this section shall affect any suit instituted before the passing of this Act, nor invalidate any contract into which a husband may, before the passing of this Act, have entered in consideration of his wife's ante-nuptial debts.

* *Archer v. Watkins*, 8 B. L. R. 372.

† 33 & 34 Vic., c. 93, s. 12.

MINORS' AMENDMENT ACT.

NO. IX. OF 1861.*

RECEIVED THE G.-G.'s ASSENT ON THE 24TH APRIL 1861.

An Act to amend the law relating to Minors.

WHEREAS it is expedient to amend the law for hearing suits relative to the custody and guardianship of minors; It is enacted as follows :—

Preamble.

1. Any relative or friend of a minor† who may desire to prefer any claim in respect of the custody or guardianship of such minor may make an application by petition, either in person or by a duly constituted agent, to the principal Civil Court of original jurisdiction in the district by which such application, if preferred in the form of a regular suit, would be cognizable, and shall set forth the grounds of his application in the petition.

Application.

The Court, if satisfied by an examination of the petitioner or his agent, if he appear by agent, that there is ground for proceeding, shall give notice of the application to the person named in the petition as having the custody or being in the possession of the person of such minor, as well as to any other person to whom the Court may think it proper that such notice should be given, and shall fix as early a day as may be convenient for the hearing of the petition and the determination of the right to the custody or guardianship of such minor.

Notice of application.

2. The Court may direct that the person having the custody or being in possession of the person of such minor shall produce him or her in Court or in any other place appointed by the Court on the day fixed for the hearing of the petition or at any other time, and may make such order for the temporary custody and protection of such minor as may appear proper.

Production, and temporary custody and protection, of minor.

3. On the day appointed for the hearing of the petition, or as soon after as may be practicable, the Court shall hear the statements of the parties or their agents if they appear by agents, and such evidence as they or their agents may adduce, and thereupon shall proceed to make such order as it shall think fit in respect to the custody or guardianship of such minor and the costs of the case.

Court, after hearing statements of parties, &c., to make order as to custody or guardianship.

4. In cases instituted under this Act, the Court shall be guided by the procedure prescribed in Act VIII. of 1859‡ (*for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter*) in so far as the same shall be applicable and material; and any order made by the Court may be enforced as if such order had been made in a regular suit.

Procedure.

* Declared to apply to the whole of British India, except the Scheduled Districts, by Act XV. of 1874. It does not apply to European British minors, 2 N.-W. P. 79, 81. As to them, see Act XIII. of 1874.

† See Act IX. of 1875, s. 3.

‡ Superseded by Act XIV. of 1882.

1861. 5. An appeal shall lie to the Sadr Court from any order made by a lower
 Act 9. Appeal. Court under this Act, under the rules applicable
 to regular appeals to such Sadr Court, except that
 the petition of appeal may be written on a stamp-paper of the value pre-
 scribed for petitions to the Sadr Court.
6. Any order passed under this Act in respect to the custody or guar-
 Orders not contestable in dianship of a minor shall not be liable to be con-
 regular suit. tested in a regular suit.
7. Nothing in this Act shall be taken to interfere with the jurisdiction
 Saving of laws. exercised under the laws in force by any Supreme
 Court of Judicature or the Courts of Wards; or
 under Act XXI. of 1855 (*for making better provision for the education of*
 male minors and the marriage of male and female minors, subject to the
 superintendence of the Courts of Wards in the Presidency of Fort Saint
 George), and Act XL of 1858 (*for making better provision for the care of*
 the persons and property of minors in the Presidency of Fort William in
 Bengal).
8. The term "Sadr Court" in this Act shall denote the highest Court
 Interpretation-clause. of Appeal in any part of the British territories
 in India.

PROVINCIAL SMALL CAUSE COURTS ACT, NO. IX. OF 1887.

1887.
Act 9.

RECEIVED THE G.-G.'s ASSENT ON 24TH FEBRUARY 1887.

An Act to consolidate and amend the law relating to Courts of Small Causes established beyond the Presidency-towns.

WHEREAS it is expedient to consolidate and amend the law relating to Courts of Small Causes established beyond the local limits for the time being of the ordinary original civil jurisdiction of the High Courts of Judicature at Port William in Bengal and at Madras and Bombay : It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Title, extent, and commencement. 1. (1) This Act may be called the Provincial Small Cause Courts Act, 1887.

(2) It extends to the whole of British India ; and

(3) It shall come into force on the first day of July 1887.

Repeal.

2. (1) The enactments specified in the first schedule are repealed to the extent mentioned in the third column thereof.

(2) But all Courts constituted, limits fixed, places appointed, appointments, declarations, and rules made, jurisdiction and powers conferred, forms prescribed, directions given, and notifications published under Act No. XI. of 1865 (*an Act to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*), or under any enactment repealed by that Act, shall, so far as may be deemed to have been respectively constituted, fixed, appointed, made, conferred, prescribed, given, and published under this Act.

(3) Any enactment or document referring to Act No. XI. of 1865, or to any enactment thereby repealed, shall, so far as may be, be construed to refer to this Act, or to the corresponding portion thereof.

Savings.

3. Nothing in this Act shall be construed to affect—

(a) any proceedings before or after decree in any suit instituted before the commencement of this Act ; or

(b) the jurisdiction of a Magistrate under any law for the time being in force with respect to debts or other claims of a civil nature, or of Village Munsifs or Village Panchayats under the provisions of the Madras Code, or of Village Munsifs under the Dekkhan Agriculturists' Relief Act, 1879 ; or

(c) any local law or any special law other than the Code of Civil Procedure.

4. In this Act, unless there is something repugnant in the subject or context,

Definition. "Court of Small Causes" means a Court of Small Causes constituted under this Act, and includes any person exercising jurisdiction under this Act in any such Court.

CHAPTER II.

CONSTITUTION OF COURTS OF SMALL CAUSES.

5. (1) The Local Government, with the previous sanction of the Governor-General in Council, may, by order in writing, establish a Court of Small Causes at any place within the territories under its administration beyond the local limits for the time being of the ordinary original civil jurisdiction of a High Court of Judicature established in a Presidency-town.

1887.

Act 9.

(2) The local limits of the jurisdiction of the Court of Small Causes shall be such as the Local Government may define, and the Court may be held at such place or places within those limits as the Local Government may appoint.

6. (1) When a Court of Small Causes has been established, the Local Government shall, by order in writing, appoint a Judge of the Court.

(2) The Judge may be the Judge of one Court of Small Causes or of two or more such Courts, as the Local Government directs.

7. (1) A Judge who is the Judge of two or more such Courts may, with the sanction of the District Court, fix the times at which he will sit in each of the Courts of which he is Judge.

Appointment of times of sitting in certain circumstances.

(2) Notice of the times shall be published in such manner as the High Court from time to time directs.

8. (1) The Local Government, with the previous sanction of the Governor-General in Council, may, by order in writing, appoint an Additional Judge of a Court of Small Causes or of two or more such Courts.

(2) The Additional Judge shall discharge such of the functions of the Judge of the Courts as the Judge may assign to him, and in the discharge of those functions shall exercise the same powers as the Judge.

(3) The Judge may withdraw from the Additional Judge any business pending before him.

(4) When the Judge is absent, the Additional Judge may discharge all or any of the functions of the Judge.

9. A Judge or Additional Judge of a Court of Small Causes may be suspended or removed from office by the Local Government.

10. The Local Government, after consultation with the High Court, may, by order in writing, direct that two Judges of Courts of Small Causes, or a Judge and an Additional Judge of a Court of Small Causes, shall sit together for the trial of such class or classes of suits or applications cognizable by a Court of Small Causes as may be described in the order.

Power to require two Judges to sit as a bench.

11. (1) If two Judges, or a Judge and an Additional Judge, sitting together under the last foregoing section, differ as to a question of law or usage having the force of law, or in construing a document, the construction of which may affect the merits, they shall draw up and refer, for the decision of the High Court, a statement of the facts of the case and of the point on which they differ in opinion, and the provisions of Chapter XLVI. of the Code of Civil Procedure shall apply to the reference.

(2) If they differ on any matter other than a matter specified in sub-section (1), the opinion of the Judge who is senior in respect of date of appointment as Judge of a Court of Small Causes, or, if one of them is an Additional Judge, then the opinion of the Judge sitting with him, shall prevail.

(3) For the purposes of sub-section (2), a Judge permanently appointed shall be deemed to be senior to an officiating Judge.

12. (1) The Local Government may appoint to a Court of Small Causes an officer to be called the Registrar of the Court.

Registrar.

(2) Where a Registrar is appointed, he shall be the chief ministerial officer of the Court.

(3) The Local Government may, by order in writing, confer upon a Registrar within the local limits of the jurisdiction of the Court, the jurisdiction of a Judge of a Court of Small Causes for the trial of suits of which the value does not exceed twenty rupees.

(4) The Registrar shall try such suits cognizable by him as the Judge may, by general or special order, direct.

(5) A Registrar may be suspended or removed from office by the Local Government.

13. Subject to any enactment for the time being in force, and to any orders made by the Local Government in this behalf, the law or practice for the time being applicable to the appointment, punishment, and transfer of ministerial officers of a Civil Court of the lowest grade competent to try an original suit of the value of five thousand rupees in that portion of the territories administered by the Local Government in which a Court of Small Causes is established, shall, so far as it can be made applicable, apply to the appointment, punishment, and transfer of ministerial officers of the Court of Small Causes other than the Registrar (if any) of that Court.

14. (1) The ministerial officers of a Court of Small Causes shall, in addition to any duties mentioned in this Act, or in any other enactment for the time being in force, as duties which are or may be imposed on any of them, discharge such duties of a ministerial nature as the Judge directs.

(2) The High Court may make rules consistent with this Act, and with any other enactment for the time being in force, conferring and imposing on the ministerial officers of a Court of Small Causes such powers and duties as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed are to be exercised and performed.

CHAPTER III.

JURISDICTION OF COURTS OF SMALL CAUSES.

15. (1) A Court of Small Causes shall not take cognizance of the suits specified in the second schedule as suits excepted from the cognizance of a Court of Small Causes.

(2) Subject to the exceptions specified in that schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature, of which the value does not exceed five hundred rupees, shall be cognizable by a Court of Small Causes.

(3) Subject as aforesaid, the Local Government may, by order in writing, direct that all suits of a civil nature, of which the value does not exceed one thousand rupees, shall be cognizable by a Court of Small Causes mentioned in the order.

16. Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable.

CHAPTER IV.

PRACTICE AND PROCEDURE.

17. (1) The procedure prescribed in the chapters and sections of the Code of Civil Procedure specified in the second schedule to that Code, as amended by this Act, shall, so far as those chapters and sections are applicable, be the procedure followed in a Court of Small Causes in all suits cognizable by it and in all proceedings arising out of such suits.

Provided that an applicant for an order to set aside a decree passed *ex parte* or for a review of judgment shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give security to the satisfaction of the Court for the performance of the decree or compliance with the judgment, as the Court may direct.

(2) Where a person has become liable as surety under the proviso to sub-section (1), the security may be realized in manner provided by section 253 of the Code of Civil Procedure.

18. (1) Suits cognizable by the Registrar under section 12, sub-sections (3) and (4), shall be tried by him, and decrees passed therein shall be executed by him, in like manner in all respects as the Judge might try the suits, and execute the decrees, respectively.

(2) The Judge may transfer to his own file, or to that of the Additional Judge if an Additional Judge has been appointed, any suit or other proceeding pending on the file of the Registrar.

1887.

Act 9.

19. (1) When the Judge of a Court of Small Causes is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may admit a plaint, or return or reject a plaint for any reason for which the Judge might return or reject it.

(2) The Judge may, of his own motion, or on the application of a party, return or reject a plaint which has been admitted by the Registrar, or admit a plaint which has been returned or rejected by him :

Provided that, where a party applies for the return or rejection or the admission of a plaint under this sub-section, and his application is not made at the first sitting of the Judge after the day on which the Registrar admitted, or returned, or rejected the plaint, the Judge shall dismiss the application, unless the applicant satisfies him that there was sufficient cause for not making the application at that sitting.

20. (1) If, before the date appointed for the hearing of a suit, the defendant or his agent duly authorized in that behalf appears before the Registrar and admits the plaintiff's claim, the Registrar may, if the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, pass against the defendant, upon the admission, a decree, which shall have the same effect as a decree passed by the Judge.

(2) Where a decree has been passed by the Registrar under sub-section (1), the Judge may grant an application for review of judgment, and re-hear the suit, on the same conditions, on the same grounds, and in the same manner as if the decree had been passed by himself.

21. (1) If the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may, subject to any instructions which he may have received from the Judge or, with respect to decrees or orders made by an Additional Judge, from the Additional Judge, make any orders in respect of applications for the execution of decrees and orders made by the Court of which he is Registrar, or sent to that Court for execution, which the Judge might make under this Act.

(2) The Judge, in the case of any decree or order with respect to the execution of which the Registrar has made an order under sub-section (1), or the Additional Judge, in the case of any such decree or order which has been made by himself, and with respect to which proceedings have not been taken by the Judge under this sub-section, may, of his own motion, or on application made by a party within fifteen days from the date of the order of the Registrar or of the execution of any process issued in pursuance of that order, reverse or modify the order.

(3) The period of fifteen days mentioned in sub-section (2) shall be computed in accordance with the provisions of the Indian Limitation Act, 1877, as though the application of the party were an application for review of judgment.

22. When the Judge of a Court of Small Causes is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar or other chief ministerial officer of the Court may exercise from time to time the power which the Court possesses of adjourning the hearing of any suit or other proceeding, and fix a day for the further hearing thereof.

23. (1) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in Return of plaints in suits involving questions of title. a Court of Small Causes depend upon the proof or disproof of a title to immoveable property or other title which such a Court cannot finally determine, the Court may, at any stage of the proceedings, return the plaint to be presented to a Court having jurisdiction to determine the title.

(2) When a Court returns a plaint under sub-section (1), it shall comply with the provisions of the second paragraph of section 57 of the Code of Civil Procedure, and make such order with respect to costs as it deems just ; and the Court shall, for the purposes of the Indian Limitation Act, 1877, be deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction.

24. Where an order specified in section 588, clause (29), of the Code of Civil Procedure, is made by a Court of Small Causes, an appeal therefrom shall lie to the District Court.

25. The High Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the case, and pass such order with respect thereto as it thinks fit.

Amendment of the second schedule to the Code of Civil Procedure.

26. In the second schedule to the Code of Civil Procedure—

(a) for "CHAPTER VIII.—Section 111, Set-off," the following shall be substituted, namely :—

"CHAPTER VIII.—Of Written Statements and Set-off ;"

(b) the following shall be inserted between the portion of the schedule referring to CHAPTER XV. and that referring to CHAPTER XVIII., namely :—

"CHAPTER XVI.—Of Affidavits ;"

(c) in the particulars against CHAPTER XIX., for "275 to 280 (both inclusive), 283," the following shall be substituted, namely :—

"275 to 283 (both inclusive) ;"

(d) for CHAPTER XLVII.—Of Review of Judgment," the following shall be substituted, namely :—

"CHAPTER XLVIII.—Of Review of Judgment, sections 623, 626, and 630 ;" and

(e) for "CHAPTER XLIX.—Miscellaneous, sections 640 to 647 (both inclusive), sections 649 to 652 (both inclusive)," the following shall be substituted, namely :—

"CHAPTER XLIX.—Miscellaneous."

27. Save as provided by this Act, a decree or order made under the foregoing provisions of this Act by a Court of Small Causes shall be final.

CHAPTER V.

SUPPLEMENTAL PROVISIONS.

28. (1) A Court of Small Causes shall be subject to the administrative control of the District Court and to the superintendence of the High Court, and shall—

(a) keep such registers, books, and accounts as the High Court from time to time prescribes, and

(b) comply with such requisitions as may be made by the District Court, the High Court, or the Local Government for records, returns, and statements in such form and manner as the authority making the requisition directs.

(2) The relation of the District Court to a Court of Small Causes, with respect to administrative control, shall be the same as that of the District Court to a Civil Court of the lowest grade competent to try an original suit of the value of five thousand rupees in that portion of the territories administered by the Local Government in which the Court of Small Causes is established.

29. A Court of Small Causes shall use a seal of such form and dimensions as are prescribed by the Local Government.

Abolition of Courts of Small Causes.

30. The Local Government may, by order in writing, abolish a Court of Small Causes.

31. (1) Nothing in this Act shall be construed to prevent the Local Government from appointing a person who is a Judge or Additional Judge of a Court of Small Causes to be also a Judge of any other Civil Court, or to be a Magistrate of any class, or to hold any other public office.

1887.

Act 9.

(2) When a Judge or Additional Judge is so appointed, the ministerial officers of his Court shall, subject to any rules which the Local Government may make in this behalf, be deemed to be ministerial officers appointed to aid him in the discharge of the duties of the other office.

Application of Act to Courts invested with jurisdiction of Court of Small Causes.

32. (1) So much of Chapters III. and IV. as relates to—

- (a) the nature of the suits cognizable by Courts of Small Causes,
- (b) the exclusion of the jurisdiction of other Courts in those suits,
- (c) the practice and procedure of Courts of Small Causes,
- (d) appeal from certain orders of those Courts and revision of cases decided by them, and
- (e) the finality of their decrees and orders subject to such appeal and revision as are provided by this Act,

applies to Courts invested by or under any enactment for the time being in force with the jurisdiction of a Court of Small Causes so far as regards the exercise of that jurisdiction by those Courts.

(2) Nothing in sub-section (1) with respect to Courts invested with the jurisdiction of a Court of Small Causes applies to suits instituted or proceedings commenced in those Courts before the date on which they were invested with that jurisdiction.

33. A Court invested with the jurisdiction of a Court of Small Causes, with respect to the exercise of that jurisdiction, and the same Court, with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure, be deemed to be different Courts.

Modification of Code as so applied.

34. Notwithstanding anything in the last two foregoing sections,—

- (a) when, in exercise of the jurisdiction of a Court of Small Causes, a Court invested with that jurisdiction sends a decree for execution to itself as a Court having jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, or
- (b) when a Court, in the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, sends a decree for execution to itself as a Court invested with the jurisdiction of a Court of Small Causes,—

the documents mentioned in section 224 of the Code of Civil Procedure shall not be sent with the decree unless in any case the Court, by order in writing, requires them to be sent.

35. (1) Where a Court of Small Causes, or a Court invested with the jurisdiction of a Court of Small Causes, has, from any cause, ceased to have jurisdiction with respect to any case, any proceeding in relation to the case, whether before or after decree, which, if the Court had not ceased to have jurisdiction, might have been had therein, may be had in the Court which, if the suit out of which the proceeding has arisen were about to be instituted, would have jurisdiction to try the suit.

(2) Nothing in this section applies to cases for which special provision is made in the Code of Civil Procedure, as extended to Courts of Small Causes, or in any other enactment for the time being in force.

Amendment of Indian Limitation Act.

36. In the third division of the second schedule to the Indian Limitation Act, 1877,—

(a) after No. 160 the following shall be inserted, namely:—

"No. 160A. For a review of judgment by a Provincial Court of Small Causes, or by a Court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction.

Ditto ... The date of the decree or order."

and (b) in No. 173, the words, figures, and letter "No. 160A and" shall be inserted before the word and figures "No. 162."

Publication of certain orders.

37. All orders required by this Act to be made in writing by the Local Government shall be published in the official Gazette.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

Number and year.	Subject or title.	Extent of repeal.
1	2	3
Act XI. of 1865 ...	Mufassal Small Cause Courts Act.	So much as has not been repealed.
Act VI. of 1871 ...	Bengal Civil Courts Act.	Section 30.
Act III. of 1873 ...	Madras Civil Courts Act.	Section 29, paragraph one.
Act XV. of 1874 ...	Laws Local Extent Act.	So much of the first schedule as relates to Acts XI. of 1865 and X. of 1867.
Act XII. of 1881 ...	North-Western Provinces Rent Act.	In section 2, the words and figures "and Act No. XI. of 1865, section 52."
Regulation I. of 1877.	Ajmere Courts Regulation.	Section 33.

THE SECOND SCHEDULE.

SUITS EXCEPTED FROM THE COGNIZANCE OF A COURT OF SMALL CAUSES.

(See section 15.)

(1) A suit concerning an act or order purporting to be done or made by the Governor-General in Council or a Local Government, or by the Governor-General or a Governor, or by a Member of the Council of the Governor-General or of the Governor of Madras or Bombay in his official capacity, or concerning an act purporting to be done by any person by order of the Governor-General in Council or a Local Government;

(2) a suit concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court or of a judicial officer acting in the execution of his office;

(3) a suit concerning an act or order purporting to be done or made by any other officer of the Government in his official capacity, or by a Court of Wards, or by an officer of a Court of Wards in the execution of his office;

(4) a suit for the possession of immoveable property or for the recovery of an interest in such property;

(5) a suit for the partition of immoveable property;

(6) a suit by a mortgagee of immoveable property for the foreclosure of the mortgage or for the sale of the property, or by a mortgagor of immoveable property for the redemption of the mortgage;

(7) a suit for the assessment, enhancement, abatement, or apportionment of the rent of immoveable property;

(8) a suit for the recovery of rent, other than house-rent, unless the Judge of the Court of Small Causes has been expressly invested by the Local Government with authority to exercise jurisdiction with respect thereto;

(9) a suit concerning the liability of land to be assessed to land-revenue;

(10) a suit to restrain waste;

(11) a suit for the determination or enforcement of any other right to or interest in immoveable property;

(12) a suit for the possession of an hereditary office or of an interest in such an office, including a suit to establish an exclusive or periodically recurring right to discharge the functions of an office;

(13) a suit to enforce payment of the allowance or fees respectively called *mālikāna* and *hakk*, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immoveable property, or in an hereditary office, or in a shrine or other religious institution;

(14) a suit to recover from a person to whom compensation has been paid under the Land Acquisition Act, 1870, the whole or any part of the compensation;

(15) a suit for the specific performance or rescission of a contract;

(16) a suit for the rectification or cancellation of an instrument;

(17) a suit to obtain an injunction;

(18) a suit relating to a trust, including a suit to make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust, and a suit by a co-trustee to enforce against the estate of a deceased trustee a claim for contribution;

- (19) a suit for a declaratory decree, not being a suit instituted under section 283 or section 332 of the Code of Civil Procedure ;
- (20) a suit instituted under section 283 or section 332 of the Code of Civil Procedure ;
- (21) a suit to set aside an attachment by a Court or a revenue-authority, or a sale, mortgage, lease, or other transfer by a Court or a revenue-authority, or by a guardian ;
- (22) a suit for property which the plaintiff has conveyed while insane ;
- (23) a suit to alter or set aside a decision, decree, or order of a Court or of a person acting in a judicial capacity ;
- (24) a suit to contest an award ;
- (25) a suit upon a foreign judgment as defined in the Code of Civil Procedure or upon a judgment obtained in British India ;
- (26) a suit to compel a refund of assets improperly distributed under s. 295 of the Code of Civil Procedure ;
- (27) a suit under the Indian Succession Act, 1865, section 320 or section 321, or under the Probate and Administration Act, 1881, section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets ;
- (28) a suit for a legacy or for the whole or a share of a residue bequeathed by a testator, or for the whole or a share of the property of an intestate ;
- (29) a suit—
- (a) for a dissolution of partnership or for the winding-up of the business of a partnership after its dissolution ;
 - (b) for an account of partnership-transactions ; or
 - (c) for a balance of partnership-account, unless the balance has been struck by the parties or their agents ;
- (30) a suit for an account of property and for its due administration under decree ;
- (31) any other suit for an account, including a suit by a mortgagor, after the mortgage has been satisfied, to recover surplus collections received by the mortgagee, and a suit for the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant ;
- (32) a suit for a general average loss or for salvage ;
- (33) a suit for compensation in respect of collision between ships ;
- (34) a suit on a policy of insurance or for the recovery of any premium paid under any such policy ;
- (35) a suit for compensation—
- (a) for loss occasioned by the death of a person caused by actionable wrong ;
 - (b) for wrongful arrest, restraint, or confinement ;
 - (c) for malicious prosecution ;
 - (d) for libel ;
 - (e) for slander ;
 - (f) for adultery or seduction ;
 - (g) for breach of contract of betrothal or promise of marriage ;
 - (h) for inducing a person to break a contract made with the plaintiff ;
 - (i) for obstruction of an easement or diversion of a watercourse ;
 - (j) for illegal, improper, or excessive distress or attachment ;
 - (k) for improper arrest under Chapter XXXIV. of the Code of Civil Procedure, or in respect of the issue of an injunction wrongfully obtained under Chapter XXXV. of that Code ; or
 - (l) for injury to the person in any case not specified in the foregoing sub-clauses of this clause ;
- (36) a suit by a Muhammadan for exigible (*mu'ajjal*) or deferred (*mu'wajjal*) dower ;
- (37) a suit for the restitution of conjugal rights, for the recovery of a wife, for the custody of a minor, or for a divorce ;
- (38) a suit relating to maintenance ;
- (39) a suit for arrears of land-revenue, village-expenses, or other sums payable to the representative of a village-community or to his heir or other successor in title ;
- (40) a suit for profits payable by the representative of a village-community or by his heir or other successor in title after payment of land-revenue, village-expenses, and other sums ;
- (41) a suit for contribution by a sharer in joint property in respect of a payment made by him of money due from a co-sharer, or by a manager of joint property, or a member of an undivided family, in respect of a payment made by him on account of the property or family ;
- (42) a suit by one of several joint mortgagors of immoveable property for contribution in respect of money paid by him for the redemption of the mortgaged property ;
- (43) a suit against the Government to recover money paid under protest in satisfaction of a claim made by a revenue-authority on account of an arrear of land-revenue or of a demand recoverable as an arrear of land-revenue ;
- (44) a suit the cognizance whereof by a Court of Small Causes is barred by any enactment for the time being in force.

NEGOTIABLE INSTRUMENTS ACT, NO. XXVI. OF 1881.

RECEIVED THE G.-G.'S ASSENT ON THE 9TH DECEMBER 1881.

An Act to define and amend the law relating to Promissory Notes, Bills of Exchange, and Cheques.

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange, and cheques; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Negotiable Instruments Act, 1881 :"

It extends to the whole of British India ; but nothing herein contained

Local extent.

Saving of usages relating to hundis, &c.

body of the instrument,

Commencement.

affects the Indian Paper Currency Act, 1871, section 21, or affects any local usage relating to any instrument in an oriental language : Provided that such usages may be excluded by any words in the which indicate an intention that the legal relations of the parties thereto shall be governed by this Act ; and it shall come into force on the first day of March, 1882.

2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof.

Interpretation-clause.

"Banker ;"

3. In this Act—
"Banker" includes also persons or a corporation or company acting as bankers ; and
"Notary public" includes also any person appointed by the Governor-General in Council to perform the functions of a notary public under this Act.

"Notary public."

CHAPTER II.

OF NOTES, BILLS, AND CHEQUES.

4. A "promissory note" is an instrument in writing (not being a blank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

"Promissory note."

Illustrations.

A signs instruments in the following terms :—

(a.) "I promise to pay B or order Rs. 500."

(b.) "I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand, for value received."

(c.) "Mr. B, I O U Rs. 1,000."

1881. (d.) "I promise to pay B Rs. 500 and all other sums which shall be due to him."
 Act 26. may owe me." (e.) "I promise to pay B Rs. 500, first deducting thereout any money which he
 (f.) "I promise to pay B Rs. 500 seven days after my marriage with C."
 (g.) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough
 to pay that sum."
 (h.) "I promise to pay B Rs. 500, and to deliver to him my black horse on 1st
 January next."

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g), and (h), are not promissory notes.

5. A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

A promise or order to pay is not "conditional" within the meaning of this section and section four by reason of the time for payment of the amount of any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain" within the meaning of this section and section four, although it includes future interest, or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given, or that payment is to be made, may be a "certain person" within the meaning of this section and section four, although he is mis-named or designated by description only.

6. A "cheque" is a bill of exchange drawn on a specified banker, and not expressed to be payable otherwise than on demand.

7. The maker of a bill of exchange or cheque is called the "drawer;" the person thereby directed to pay is called the "drawee."

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor."

"When a bill of exchange has been noted or protested for non-acceptance or for better security,"* and any person accepts in *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour."

* The words quoted have been substituted by Act II. of 1885, s. 2, for the following :
 'When acceptance is refused, and the bill is protested for non-acceptance.'

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee."
 1881.
 Act 26.

8. The "holder" of a promissory note, bill of exchange, or cheque, means any person entitled in his own name to the possession thereof, and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill, or cheque, is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange, or cheque, if payable to bearer, or the payee or indorsee thereof, if payable to, or to the order of, a payee, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

11. A promissory note, bill of exchange, or cheque, drawn or made in British India, and made payable in, or drawn upon any person resident in, British India, shall be deemed to be an inland instrument.

Inland instrument.

12. Any such instrument, not so drawn, made, or made payable, shall be deemed to be a foreign instrument.

Foreign instrument.

13. A "negotiable instrument" means a promissory note, bill of exchange, or cheque expressed to be payable to a specified person or his order, or to the order of a specified person or to the bearer thereof, or to a specified person or the bearer thereof.

"Negotiable instrument."

14. When a promissory note, bill of exchange, or cheque, is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

Negotiation.

15. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof, or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

Indorsement.

16. If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full;" and the person so specified is called the "indorsee" of the instrument.

Indorsement "in blank" and "in full."

"Indorsee."

17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may, at his election, treat it as either, and the instrument shall be thenceforward treated accordingly.

Ambiguous instruments.

1861. **18.** If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

Act 26. Where amount is stated differently in figures and words.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima-facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein, and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

21. In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

"At sight."

"On presentment."

"After sight."

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight, or on presentment,

Days of grace.

is at maturity on the third day after the day on which it is expressed to be payable.

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight, and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Calculating maturity of bill or note payable so many months after date or sight.

Illustrations.

(a.) A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.

(b.) A negotiable instrument, dated 30th August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

(c.) A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight, or after a certain event, is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded. 1891.
Act 26.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business-day.

Explanation.—The expression “public holiday” includes Sundays: New-Year’s day; Christmas day: if either of such days falls on a Sunday, the next following Monday: Good Friday; and any other day declared by the Local Government, by notification in the official Gazette, to be a public holiday.

CHAPTER III.

PARTIES TO NOTES, BILLS, AND CHEQUES.

26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery, and negotiation of a promissory note, bill of exchange, or cheque.

Capacity to make, &c., promissory notes, &c. A minor may draw, indorse, deliver, and negotiate such instruments so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, indorse, or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

27. Every person capable of binding himself or of being bound, as mentioned in section twenty-six, may so bind himself or be bound by a duly authorized agent acting in his name.

Agency.

A general authority to transact business, and to receive and discharge debts, does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

28. An agent who signs his name to a promissory note, bill of exchange, or cheque, without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Liability of agent signing.

29. A legal representative of a deceased person, who signs his name to a promissory note, bill of exchange, or cheque, is liable personally thereon, unless he expressly limits his liability to the extent of the assets received by him as such.

Liability of legal representative signing.

30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Liability of drawer.

1881. **31.** The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

Act 26.

Liability of drawee of cheque.

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

Liability of maker of note and acceptor of bill.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Only drawee can be acceptor except in need or for honour.

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

Acceptance by several drawees not partners.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor, or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Liability of indorser.

Every indorser after dishonour is liable as upon an instrument payable on demand.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Liability of prior parties to holder in due course.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor, are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer, or acceptor, as the case may be.

Maker, drawer, and acceptor principals.

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Prior party a principal in respect of each subsequent party.

Illustration.

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C, and D, are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor, and D is his surety.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged. 1881.
Act 26.

40. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Illustration.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank :—

First indorsement, "B."

Second indorsement, "Peter Williams."

Third indorsement, "Wright & Co."

Fourth indorsement, "John Rozario."

This bill A puts in suit against John Rozario, and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

42. An acceptor of a bill of exchange drawn in a fictitious name, and payable to the drawer's order, is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

43. A negotiable instrument made, drawn, accepted, indorsed, or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted, or indorsed, can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II.—No party to the instrument who has induced any other party to make, draw, accept, indorse, or transfer the same to him for a consideration which he has failed to pay or perform in full, shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

44. When the consideration for which a person signed a promissory note, bill of exchange, or cheque, consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

1881. *Explanation.*—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange, or cheque, stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Act 26.

Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange, or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

45A.* Where a bill of exchange has been lost before it is over-due, the holder's right to duplicate person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer, on request as aforesaid, refuses to give such duplicate bill, he may be compelled to do so.

CHAPTER IV.

OF NEGOTIATION.

46. The making, acceptance, or indorsement of a promissory note, bill of exchange, or cheque, is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting, or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange, or cheque payable to bearer, is negotiable by the delivery thereof.

A promissory note, bill of exchange, or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

47. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange, or cheque payable to bearer, is negotiable by delivery.

Exception.—A promissory note, bill of exchange, or cheque delivered on condition that it is not to take effect except in a certain event, is not negotiable (except in the hands of a holder for value without notice of the condition), unless such event happens.

* New section, inserted by Act II. of 1885, s. 3.

Illustrations.

1881.

(a.) A, the holder of a negotiable instrument payable to bearer delivers it to B's agent to keep for B. The instrument has been negotiated. **Act 26.**

(b.) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

48. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange, or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer :—

- (a.) " Pay the contents to C only."
- (b.) " Pay C for my use."
- (c.) " Pay C or order for the account of B."
- (d.) " The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

(e.) " Pay C."

(f.) " Pay C value in account with the Oriental Bank."

(g.) " Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

51. Every sole maker, drawer, payee, or indorsee, or all of several joint makers, drawers, payees, or indorsees, of a negotiable instrument, may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section fifty, indorse and negotiate the same.

Explanation—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustration.

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

1881.

Act 26.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an indorser so excludes his liability, and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations.

(a.) The indorser of a negotiable instrument signs his name, adding the words—
“Without recourse.”

Upon this indorsement he incurs no liability.

(b.) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement “without recourse,” he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

53. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

54. Subject to the provisions hereinafter contained as to crossed cheques, Instrument indorsed in blank. a negotiable instrument indorsed in blank is payable to the bearer thereof, even although originally payable to order.

55. If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title from such person.

56. No writing on a negotiable instrument is valid for the purpose of Indorsement for part of sum due. negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but, where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

Legal representative cannot, by delivery only, negotiate instrument indorsed by deceased.

57. The legal representative of a deceased person cannot negotiate, by delivery only, a promissory note, bill of exchange, or cheque payable to order, and indorsed by the deceased, but not delivered.

58. When a negotiable instrument has been lost, or has been obtained from any maker, acceptor, or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor, or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:

Provided that any person who, in good faith and for consideration, 1891.
 Accommodation note or becomes the holder, after maturity, of a promis-
 sory note or bill of exchange made, drawn, or Act 26.
 accepted without consideration, for the purpose of enabling some party
 thereto to raise money thereon, may recover the amount of the note or bill
 from any prior party.

Illustration.

The acceptor of a bill of exchange, when he accepted it, deposited with the
 drawer certain goods as a collateral security for the payment of the bill, with power
 to the drawer to sell the goods and apply the proceeds in discharge of the bill if it
 were not paid at maturity. The bill not having been paid at maturity, the drawer
 sold the goods and retained the proceeds, but indorsed the bill to A. A's title is
 subject to the same objection as the drawer's title.

60. A negotiable instrument may be negotiated (except by the maker,
 Instrument negotiable till drawee, or acceptor after maturity) until payment
 payment or satisfaction. or satisfaction thereof by the maker, drawee, or
 acceptor at or after maturity, but not after such payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

61. A bill of exchange payable after sight must, if no time or place is
 specified therein for presentment, be presented to
 Presentment for acceptance. the drawee thereof for acceptance, if he can, after
 reasonable search, be found, by a person entitled to demand acceptance, within
 a reasonable time after it is drawn, and in business hours on a business-day.
 In default of such presentment, no party thereto is liable thereon to the
 person making such default.

If the drawee cannot, after reasonable search, be found, the bill is
 dishonoured.

If the bill is directed to the drawee at a particular place, it must be
 presented at that place; and if at the due date for presentment he cannot,
 after reasonable search, be found there, the bill is dishonoured.

"Where authorized by agreement or usage, a presentment through the
 post-office by means of a registered letter is sufficient." *

62. A promissory note, payable at a certain period after sight, must be
 Presented to the maker thereof for sight (if he
 Presentment of promissory note for sight. can, after reasonable search, be found) by a person
 entitled to demand payment, within a reasonable time, after it is made, and
 in business hours on a business-day. In default of such presentment, no
 party thereto is liable thereon to the person making such default.

63. The holder must, if so required by the drawee of a bill of exchange
 presented to him for acceptance, allow the drawee
 Drawee's time for delibera- twenty-four hours (exclusive of public holidays)
 tion. to consider whether he will accept it.

64. Promissory notes, bills of exchange, and cheques, must be presented
 for payment to the maker, acceptor, or drawee
 Presentment for payment. thereof respectively, by or on behalf of the holder
 as hereinafter provided. In default of such presentment, the other parties
 thereto are not liable thereon to such holder. "Where authorized by agree-
 ment or usage, a presentment through the post-office by means of a register-
 ed letter is sufficient." *

* The words quoted have been added by Act II. of 1885, s. 4.

1891.

Act 26.

Exception.—Where a promissory note is payable on demand, and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Hours for presentment.
Presentment for payment of instrument payable after date or sight.

66. A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

Presentment for payment of promissory note payable by instalments.

Presentment for payment of instrument payable at specified place and not elsewhere.

68. A promissory note, bill of exchange, or cheque, made, drawn, or accepted payable at a specified place, and not elsewhere, must, in order to charge any party thereto, be presented for payment at that place.

69. A promissory note or bill of exchange made, drawn, or accepted payable at a specified place, must, in order to charge the maker or drawer thereof, be presented for payment at that place.

Instrument payable at specified place.

70. A promissory note or bill of exchange, not made payable as mentioned in sections sixty-eight and sixty-nine, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee, or acceptor thereof, as the case may be.

Presentment where no exclusive place specified.

71. If the maker, drawee, or acceptor of a negotiable instrument, has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

Presentment when maker, &c., has no known place of business or residence.

72. A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Presentment of cheque to charge drawer.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Presentment of cheque to charge any other person.

74. Subject to the provisions of section thirty-one, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Presentment of instrument payable on demand.

75. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker, or acceptor, as the case may be, or, where the drawee, maker, or acceptor, has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

Presentment by or to agent, representative of deceased, or assignee of insolvent.

76. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment in any of the following cases :— 1881.
Act 26.

(a) if the maker, drawee, or acceptor, intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business-day during the usual business-hours, or,

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business-hours, or,

if the instrument not being payable at any specified place, he cannot, after due search, be found ;

(b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment ;

(c) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part-payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment ;

(d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

77. When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with, or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

Liability of banker for negligently dealing with bill presented for payment.

been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with, or delivers back such bill

CHAPTER VI.

OF PAYMENT AND INTEREST.

78. Subject to the provisions of section eighty-two, clause (c), payment of the amount due on a promissory note, bill of exchange, or cheque, must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

Interest when rate specified.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, section 532, be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Interest when no rate specified.

Explanation.—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

1881.
Act 26.
81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange, or cheque, is, before payment, entitled to have it shown, and is, on payment, entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS, AND CHEQUES.

- Discharge from liability.
82. The maker, acceptor, or indorser, respectively, of a negotiable instrument, is discharged from liability thereon—
- (a) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder ;
 - (b) to a holder thereof who otherwise discharges such maker, acceptor, or indorser, and to all parties deriving title under such holder after notice of such discharge ;
 - (c) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor, or indorser, makes payment in due course of the amount due thereon.

83. If the holder of a bill of exchange allows the drawee more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.
- Discharge by allowing drawee more than twenty-four hours to accept.

84. When the holder of a cheque fails to present it for payment within a reasonable time, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder.
- When cheque not duly presented and drawer damaged thereby.

85. Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.
- Cheque payable to order.

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.
- Parties not consenting discharged by qualified or limited acceptance.

Explanation.—An acceptance is qualified—

- (a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated ;
- (b) where it undertakes the payment of part only of the sum ordered to be paid ;
- (c) where, no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere ; or where, a place of payment being specified in the order, it undertakes the payment at some other place, and not otherwise or elsewhere ;

(d) where it undertakes the payment at a time other than that at which under the order it would be legally due. 1881.
Act 26.

87. Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration, and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections twenty, forty-nine, eighty-six, and one hundred and twenty-five.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Payment of instrument on which alteration is not apparent.

89. Where a promissory note, bill of change, or cheque, has been materially altered, but does not appear to have been so altered, or where a cheque is presented for payment which does not, at the time of presentation, appear to be crossed, or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon; and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

Extinguishment of rights of action on bill in acceptor's hands.

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

* CHAPTER VIII.

OF NOTICE OF DISHONOUR.

91. A bill of exchange is said to be dishonoured by non-acceptance. Dishonour by non-acceptance. when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

92. A promissory note, bill of exchange, or cheque, is said to be dishonoured by non-payment. Dishonour by non-payment. when the maker of the note, acceptor of the bill, or drawee of the cheque, makes default in payment upon being duly required to pay the same.

93. When a promissory note, bill of exchange, or cheque, is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

1881. Nothing in this section renders it necessary to give notice to the maker
Act 26. of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

94. Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section ninety-three.

96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When notice of dishonour is unnecessary.

98. No notice of dishonour is necessary—

- (a) when it is dispensed with by the party entitled thereto;
- (b) in order to charge the drawer, when he has countermanded payment;
- (c) when the party charged could not suffer damage for want of notice;
- (d) when the party entitled to notice cannot, after due search, be found;
- or the party bound to give notice is, for any other reason, unable, without any fault of his own, to give it;
- (e) to charge the drawers, when the acceptor is also a drawer;
- (f) in the case of a promissory note which is not negotiable;
- (g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX.

OF NOTING AND PROTEST.

99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason (if any) assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges. 1881.
Act 26.

100. When a promissory note or bill of exchange has been dishonoured

Protest.

by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and, on its being refused, may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Protest for better security.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and, on its being refused, may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Contents of protest.

101. A protest under section one hundred must contain—

(a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon ;

(b) the name of the person for whom and against whom the instrument has been protested ;

(c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public ; the terms of his answer (if any), or a statement that he gave no answer, or that he could not be found ;

(d) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal ;

(e) the subscription of the notary public making the protest ;

(f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

A notary public may make the demand mentioned in clause (c) of this section either in person or by his clerk, or, where authorized by agreement or usage, by registered letter.*

102. When a promissory note or bill of exchange is required by law to

Notice of protest.

be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions ; but the notice may be given by a notary public who makes the protest.

103. All bills of exchange drawn payable at some other place than the

Protest for non-payment after dishonour for non-acceptance.

place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

104. Foreign bills of exchange must be protested for dishonour when

Protest of foreign bills.

such protest is required by the law of the place where they are drawn.

* This para. has been added by Act II. of 1885, s. 5.

- 1881.** **104A.** For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.*
- Act 26.** When noting equivalent to protest.

CHAPTER X.

OF REASONABLE TIME.

105. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour, and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.†

109. A person desiring to accept for honour must, by writing on the bill under his hand, declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour.‡

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

* New section, added by Act II. of 1885, s. 6.

† The second sentence of this section has been repealed by Act II. of 1885, s. 7, and has therefore been omitted.

‡ As amended by Act II. of 1885, s. 8.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance. 1881.
Act 26.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

112. An acceptor for honour cannot be charged unless the bill has, at its maturity, been presented to the drawee for payment, and has been dishonoured by him, and may be charged. When acceptor for honour noted or protested for such dishonour.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying, "or his agent in that behalf,"* has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid with interest thereon, and with all expenses properly incurred in making such payment.

115. Where a drawee in case of need is named in a bill of exchange or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

CHAPTER XII.

OF COMPENSATION.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange, or cheque, by any party liable to the holder or any indorsee, shall (except in cases provided for by the Code of Civil Procedure, section 532) be determined by the following rules:—

(a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting, and protesting it;

(b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;

(c) an indorser who, being liable, has paid the amount due on the same, is entitled to the amount so paid, with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment;

* The words quoted have been inserted by Act II. of 1885, s. 9.

1891. (d) when the person charged and such indorser reside at different places,
 Act 26. the indorser is entitled to receive such sum at the current rate of exchange between the two places;

(e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

Presumptions as to negotiable instruments

(a) that every negotiable instrument was made or drawn for consideration of consideration ;
 was accepted, indorsed, negotiated, or transferred for consideration ;

as to date ; (b) that every negotiable instrument bearing a date was made or drawn on such date ;

as to time of acceptance ; (c) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity ;

as to time of transfer ; (d) that every transfer of a negotiable instrument was made before its maturity ;

as to order of indorsements ; (e) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon ;

as to stamp ; (f) that a lost promissory note, bill of exchange, or cheque, was duly stamped ;

(g) that the holder of a negotiable instrument is a holder in due course ; provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him.

119. In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer, shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

121. No maker of a promissory note, and no acceptor of a bill of exchange payable to, or to the order of, a specified person, shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

- 122.** No indorser of a negotiable instrument shall, in a suit thereon by 1881.
 Estoppel against denying signature or capacity of prior party. a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument. **Act 26.**

CHAPTER XIV.

OF CROSSED CHEQUES.

- 123.** Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

- 124.** Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

- 125.** Where a cheque is uncrossed, the holder may cross it generally or specially:

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

- 126.** Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent, for collection.

- 127.** Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

128. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

- 129.** Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent, for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

1891. **130.** A person taking a cheque crossed generally or specially, bearing
Act 26. Cheque bearing "not nego- in either case the words "not negotiable," shall
 tiable. not have, and shall not be capable of giving, a
 better title to the cheque than that which the person from whom he took it
 had.

131. A banker who has, in good faith, and without negligence, received
 Non-liability of banker's re- payment, for a customer, of a cheque crossed
 ceiving payment of cheque. generally or specially to himself, shall not, in case
 the title to the cheque proves defective, incur any liability to the true owner
 of the cheque by reason only of having received such payment.

CHAPTER XV.

OF BILLS IN SETS.

132. Bills of exchange may be drawn in parts, each part being numbered,
 Set of bills. and containing a provision that it shall continue
 payable only so long as the others remain unpaid.
 All the parts together make a set; but the whole set constitutes only one
 bill, and is extinguished when one of the parts, if a separate bill, would be
 extinguished.

Exception.—When a person accepts or indorses different parts of the
 bill in favour of different persons, he and the subsequent indorsers of each
 part are liable on such part as if it were a separate bill.

133. As between holders in due course of different parts of the same
 Holder of first acquired set, he who first acquired title to his part is en-
 part entitled to all. titled to the other parts and the money represented
 by the bill.

CHAPTER XVI.

OF INTERNATIONAL LAW.

134. In the absence of a contract to the contrary, the liability of the
 Law governing liability of maker or drawer of a foreign promissory note, bill
 maker, acceptor, or indorser of exchange, or cheque, is regulated in all essen-
 of foreign instrument. tial matters by the law of the place where he made
 the instrument, and the respective liabilities of the acceptor and indorser by
 the law of the place where the instrument is made payable.

Illustration.

A bill of exchange was drawn by A in California, where the rate of interest is
 25 per cent., and accepted by B, payable in Washington, where the rate of interest
 is 6 per cent. The bill is endorsed in British India, and is dishonoured. An action
 on the bill is brought against B in British India. He is liable to pay interest at the
 rate of 6 per cent. only; but if A is charged as drawer, A is liable to pay interest
 at the rate of 25 per cent.

135. Where a promissory note, bill of exchange, or cheque, is made
 Law of place of payment payable in a different place from that in which
 governs dishonour. it is made or indorsed, the law of the place where
 it is made payable determines what constitutes dishonour, and what notice of
 dishonour is sufficient.

Illustration.

1881.

Act 26.

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

136. If a negotiable instrument is made, drawn, accepted, or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in British India.

137. The law of any foreign country regarding promissory notes, bills of exchange, and cheques, shall be presumed to be the same as that of British India, unless and until the contrary is proved.

CHAPTER XVII.*

NOTARIES PUBLIC.

138. The Governor-General in Council may, from time to time, by notification in the official Gazette, appoint any person, by name or by virtue of his office, to be a notary public under this Act, and to exercise his functions as such within any local area, and may, by like notification, remove from office any notary public appointed under this Act.

139. The Governor-General in Council may, from time to time, by notification in the official Gazette, make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may, by such rules (among other matters), fix the fees payable to such notaries.

* New chapter, inserted by Act II. of 1885, s. 10.

SCHEDULE.

(a.)—STATUTES.

Year and chapter.	Title.	Extent of repeal.
9 Wm. III., c. 17 ...	An Act for the better payment of Inland Bills of Exchange.	The whole.
3 & 4 Anne, c. 8 ...	An Act for giving like remedy upon promissory notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange.	The whole.

(b.)—ACTS OF THE GOVERNOR-GENERAL IN COUNCIL

Number and year.	Title.	Extent of repeal.
VI. of 1840 ...	An Act for the amendment of the law concerning the negotiation of Bills of Exchange.	The whole.
V. of 1866 ...	An Act to amend in certain respects the Commercial Law of British India.	Sections 11, 12, and 13.
XV. of 1874...	The Laws Local Extent Act, 1874 ...	The first schedule, so far as relates to Act VI. of 1840 and Act V. of 1866, sections 11, 12, and 13.

INDIAN OATHS' ACT, NO. X. OF 1873.

RECEIVED THE G.-G.'S ASSENT ON THE 8TH APRIL 1873.

An Act to consolidate the law relating to Judicial Oaths, and for other purposes.

Preamble. WHEREAS it is expedient to consolidate the law relating to judicial oaths, affirmations, and declarations, and to repeal the law relating to official oaths, affirmations, and declarations; It is hereby enacted as follows:—

I.—Preliminary.

Short title. 1. This Act may be called "The Indian Oaths' Act, 1873."

Local extent. It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the territories of Native Princes and States in alliance with Her Majesty.

2. [*Repealed by Act XII. of 1873.*]

Saving of certain oaths and affirmations. 3. Nothing herein contained applies to proceedings before Courts Martial, or to oaths, affirmations, or declarations prescribed by any law which, under the provisions of the Indian Councils' Act, 1861, the Governor-General in Council has not power to repeal.

II.—Authority to administer Oaths and Affirmations.

Authority to administer oaths and affirmations. 4. The following Courts and persons are authorized to administer by themselves, or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law:—

(a.) All Courts and persons having by law or consent of parties authority to receive evidence;

(b.) The Commanding Officer of any military station occupied by troops in the service of Her Majesty: provided

(1) that the oath or affirmation be administered within the limits of the station, and

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India.

III.—Persons by whom Oaths or affirmations must be made.

Oaths or affirmations to be made by— 5. Oaths or affirmations shall be made by the following persons:—

(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence:

witnesses: (b.) interpreters of questions put to, and evidence given by, witnesses, and

interpreters: (c) jurors.

jurors.

Act 10.

Nothing herein contained shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

Affirmation by natives or by persons objecting to oaths.

6. Where the witness, interpreter, or juror, is a Hindú or Muhammadan, or has an objection to making an oath, he shall, instead of making an oath, make an affirmation. In every other case, the witness, interpreter, or juror, shall make an oath.

IV.—Forms of Oaths and Affirmations.

7. All oaths and affirmations made under section five shall be administered according to such forms as the High Court may from time to time prescribe.*

And until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

Explanation.—As regards oaths and affirmations administered in the Court of the Recorder of Rangoon and the Court of Small Causes of Rangoon, the Recorder of Rangoon shall be deemed to be the High Court within the meaning of this section.

8. If any party to, or witness in, any judicial proceeding, offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

9. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section eight, if such oath or affirmation is made by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation :

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

10. If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed, and return it to the Court.

Evidence conclusive as against person offering to be bound.

11. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

12. If the party or witness refuses to make the oath or solemn affirmation referred to in section eight, he shall not be compelled to make it, but the Court shall record,

* Calcutta Gazette, 20th August, 1873, p. 984 : North-Western Provinces Gazette, 3rd May, 1873, p. 604 : Punjab Gazette, 15th May, 1873, Part III., p. 209.

as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal. 1873.
Act 10.

V.—Miscellaneous.

13. No omission* to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution, or irregularity took place, or shall affect the obligation of a witness to state the truth.

14. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.†

15. The Indian Penal Code, sections 178 and 181, shall be construed as if, after the word "oath," the words "or affirmation" were inserted.

16. Subject to the provisions of sections three and five, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath or to make or subscribe any affirmation or declaration whatever.

* This "includes any omission, and is not limited to accidental or negligent omissions."—*Rev. v. Sewa Bhogta*, 14 B. L. R. 294.

† See Act XLV. of 1860, s. 191.

POWERS OF ATTORNEY ACT, NO. VII. OF 1882.

RECEIVED THE G.-G.'s ASSENT ON THE 24TH FEBRUARY 1882.

An Act to amend the law relating to Powers-of-Attorney.

FOR the purpose of amending the law relating to Powers-of-Attorney ;
It is hereby enacted as follows :—

Short title.	1. This Act may be called "The Powers-of-Attorney Act, 1882."
Local extent.	• It applies to the whole of British India ;
Commencement.	and it shall come into force on the first day of May, 1882.

2. The donee of a power-of-attorney may, if he thinks fit, execute or do any as ¹rance, instrument, or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power ; and every assurance, instrument, and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force.

3. Any person making or doing any payment or act in good faith, in pursuance of a power-of-attorney, shall not be liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died or become lunatic, of unsound mind, or bankrupt or insolvent, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, insolvency, or revocation, was not, at the time of the payment or act, known to the person making or doing the same.

But this section shall not affect any right against the payee of any person interested in any money so paid ; and that person shall have the like remedy against the payee as he would have had against the payor, if the payment had not been made by him.

This section applies only to payments and acts made or done after this Act comes into force.

4. (a.) An instrument creating a power-of attorney, its execution being verified by affidavit, statutory declaration, or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the High Court within the local limits of whose jurisdiction the instrument may be.

(b.) A separate file of instruments so deposited shall be kept ; and any person may search that file, and inspect every instrument so deposited ; and a certified copy thereof shall be delivered out to him on request.

(c.) A copy of an instrument so deposited may be presented at the office, and may be stamped or marked as a certified copy, and when so stamped or marked, shall become and be a certified copy.

1882. (d.) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument and of the deposit thereof in the High Court.

Act 7. (e.) The High Court may, from time to time, make rules for the purposes of this section, and prescribing, with the concurrence of the Local Government, the fees to be taken under clauses (a), (b), and (c).

(f.) Throughout British Burma, the Court of the Recorder of Rangoon shall, for the purposes of this section, be deemed to be the High Court.

(g.) This section applies to instruments creating powers-of-attorney executed either before or after this Act comes into force.

5. A married woman, whether a minor or not, shall, by virtue of this Power-of-attorney of married woman. Act, have power, as if she were unmarried and of full age, by a non-testamentary instrument, to appoint an attorney on her behalf, for the purpose of executing any non-testamentary instrument or doing any other act which she might herself execute or do; and the provisions of this Act, relating to instruments creating powers-of-attorney, shall apply thereto.

This section applies only to instruments executed after this Act comes into force.

Act XXVIII. of 1866, s. 39, repealed.

6. The Trustees' and Mortgagees' Powers Act, 1866, section 3., is hereby repealed.

PRESIDENCY SMALL CAUSE COURTS ACT, NO. XV. OF 1882. .

RECEIVED THE G.-G.'S ASSENT ON THE 17TH MARCH 1882.

An Act to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns.

WHEREAS it is expedient to consolidate and amend the law relating to the Courts of Small Causes established in the towns of Calcutta, Madras, and Bombay ; It is hereby enacted as follows :—

Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Presidency Small Cause Courts Act 1882 ;" and it shall come into force on the first day of July, 1882.

Short title.

Commencement.

But nothing herein contained shall affect the provisions of the Army Act, 1881, section 151, or the rights or liabilities of any person under any decree passed before that day.

2. On and from the said day the enactments specified in the first schedule hereto annexed shall be repealed to the extent mentioned therein.

Repeal of enactments.

But all Courts constituted, appointments made, and securities given under any of the said enactments, shall, so far as may be, be deemed to have been respectively constituted, made, and given under this Act.

All references to any enactment hereby repealed, made in Acts passed prior to the said day, shall be read, so far as may be practicable, as if made to this Act or the corresponding provisions hereof.

References in previous Acts.

3. In Act No. XXIII. of 1850 (*for securing the Land-revenue of Calcutta*), section 3, for the word and figures "Act VII., 1847," the words and figures, "The Presidency Small Cause Courts Act, 1882, Chapter VIII.," shall be substituted ; the words, "as provided by the said Act," shall be repealed ; and for each of the expressions, "a Commissioner of the Court for recovery of small debts referred to in the said Act," and "the said Commissioners," the words, "the Judges of the Court of Small Causes at Calcutta," shall be substituted. In the Code of Civil Procedure, section 8, after the word and figures, "Chapter XXXIX.," the words and figures, "and by the Presidency Small Cause Courts Act, 1882," shall be inserted.

4. In this Act, "the Small Cause Court" means the Court of Small Causes constituted under this Act in the town of Calcutta, Madras, or Bombay, as the case may be.

defined.

CHAPTER II.

CONSTITUTION AND OFFICERS OF THE COURT.

5. There shall be in each of the towns of Calcutta, Madras, and Bombay, Courts of Small Causes a Court, to be called the Court of Small Causes of Calcutta, Madras, or Bombay, as the case may be established.

6. The Small Cause Court shall be deemed to be a Court subject to the superintendence of the High Court of Judicature at Fort William, Madras, or Bombay, as the case may be, within the meaning of the Letters Patent respectively, dated the 28th day of December, 1865, for such High Courts, and within the meaning of the Code of Civil Procedure; and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the twenty fourth and twenty-fifth of Victoria, chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction.

7. Subject to the control of the Governor-General in Council, the Local Appointment, suspension, and removal of Judges. Government may, from time to time, by notification in the official Gazette, appoint a person to be Chief Judge, and so many other persons as it thinks fit to be Judges, of the Small Cause Court: Provided that not less than one-third of the persons so appointed, including the Chief Judge, shall be advocates of one of the said High Courts.

The Local Government may, by a like notification, suspend and, with the previous sanction of the Governor-General in Council, remove any Judge so appointed.

All barristers who, when this Act comes into force, are, or are acting as, Judges of the Small Cause Court, shall, for the purposes of this section, be deemed to be advocates of a High Court.

8. The Chief Judge shall be the first of the Rank and precedence of Judges. Judges in rank and precedence.

The other Judges shall have rank and precedence as the Local Government may, from time to time, direct.

9. Except as otherwise provided by this or any other law for the time being in force, the Small Cause Court may, with the previous sanction of the High Court, make rules to provide, in such manner as it thinks fit, for all matters not specially provided for by this Act, and for the exercise, by one or more of its Judges, of any powers conferred on the Small Cause Court by this Act, or by any other law for the time being in force. Power to make rules.

10. Subject to such rules, the Chief Judge may, from time to time, make Chief Judge to distribute business of Court. such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof.

11. Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail; and if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or in his absence the Judge first in rank and precedence of the Judges so differing, shall have the casting voice. Procedure in case of difference of opinion.

12. The Small Cause Court shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government. Seal to be used.

13. The Local Government may, from time to time, appoint an officer ^{1882.}
 Appointment of Registrar to be called the Registrar of the Court, and to be Act 15.
 and ministerial officers. the chief ministerial officer of the Court ;

and the Chief Judge may, from time to time, subject to the control of the Local Government, appoint as many clerks, bailiffs, and other ministerial officers as may be necessary for the administration of justice by the Court, and for the exercise and performance of the powers and duties conferred and imposed on it by this Act or any other law for the time being in force.

The Registrar and other officers so appointed shall exercise such powers, Powers and duties of such officers. and discharge such duties, of a ministerial nature, as the Chief Judge may, from time to time, by rule, direct.

The Chief Judge may suspend or remove any Registrar or other officer so appointed ; but the removal of any Registrar or officer drawing a monthly salary of one hundred rupees or upwards shall be subject to the orders of the Local Government.

14. The Local Government may invest the Registrar with the powers Registrar may be invested of a Judge under this Act for the trial of suits in which the amount or value of the subject-matter does not exceed twenty rupees. And, subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to the file of the Registrar any suit which the latter is competent to try.

15. No Judge or other officer appointed under this Act shall, during Judge or other officer not his continuance as such Judge or officer, either by to practise or trade. himself or as a partner of any other person, practise or act, either directly or indirectly, as an advocate, attorney, vakil, or other legal practitioner, or be concerned, either on his own account or for any other person, or as the partner of any other person, in any trade or profession.

Any such Judge or officer so practising, acting, or concerned, shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

Nothing herein contained shall be deemed to prohibit any such Judge or officer from being a member of any company incorporated or registered under Royal Charter, Letters Patent, Act of Parliament, or Act of any British Indian legislature.

CHAPTER III.

LAW ADMINISTERED BY THE COURT.

16. All questions, other than questions relating to procedure or practice, Questions arising in suits, which arise in suits or other proceedings under this Act in the Small Cause Court, shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

CHAPTER IV.

JURISDICTION IN RESPECT OF SUITS.

17. The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court.

18. Subject to the exceptions in section nineteen, the Small Cause Court shall have jurisdiction to try all suits of a civil nature—

when the amount or value of the subject-matter does not exceed two thousand rupees; and

(a) the cause of action has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given before the institution of the suit; or

(b) all the defendants, at the time of the institution of the suit, actually and voluntarily reside, or carry on business, or personally work for gain, within such local limits; or

(c) any of the defendants, at the time of the institution of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, within such local limits, and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

Explanation I.—When in any suit the sum claimed is, by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit.

Explanation II.—Where a person has a permanent dwelling at one place, and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

Explanation III.—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Suits in which Court has no jurisdiction.

19. The Small Cause Court shall have no jurisdiction in—

(a) suits concerning the assessment or collection of the revenue;

(b) suits concerning any act ordered or done by the Governor-General in Council or the Local Government, or by the Governor-General or a Governor, or by any Member of the Council of the Governor-General or of the Governor of Madras or Bombay in his official capacity, or by any person by order of the Governor-General in Council or the Local Government;

(c) suits concerning any act ordered or done by any Judge or judicial officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court or any such Judge or judicial officer;

(d) suits for the recovery of immovable property;

(e) suits for the partition of immovable property;

(f) suits for the foreclosure or redemption of a mortgage of immovable property;

(g) suits for the determination of any other right to or interest in immovable property;

(h) suits for the specific performance or rescission of contracts;

(i) suits to obtain an injunction;

(j) suits for the cancellation or rectification of instruments;

(k) suits to enforce a trust;

(l) suits for a general average loss and suits on policies of insurance on sea-going vessels;

(m) suits for compensation in respect of collisions on the high seas;

(n) suits for compensation for the infringement of a patent, copyright, or trade-mark;

- (o) suits for a dissolution of partnership or for an account of partnership transactions ; 1882.
- (p) suits for an account of property and its due administration under the decree of the Court ; Act 15.
- (q) suits for compensation for libel, slander, malicious prosecution, adultery, or breach of promise of marriage ;
- (r) suits for the restitution of conjugal rights, for the recovery of a wife, or for a divorce ;
- (s) suits for declaratory decrees ;
- (t) suits for possession of a hereditary office ;
- (u) suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States ;
- (v) suits on any judgment of a High Court ;
- (w) suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force.

20. When the parties to a suit which, if the amount or value of the subject-matter thereof did not exceed two thousand rupees, would be cognizable by the Small Cause Court, have entered into an agreement in writing that the Small Cause Court shall have jurisdiction to try such suit, the Court shall have jurisdiction to try the same, although the amount or value of the subject-matter thereof may exceed two thousand rupees.

Every such agreement shall be filed in the Small Cause Court, and, when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit.

21. All suits to which an officer of the Small Cause Court is, as such, a party, except suits in respect of property taken in execution of its process, or the proceeds or value thereof, may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed.

22. If any suit cognizable by the Small Cause Court, other than a suit to which section twenty-one applies, is instituted in the High Court, and if, in such suit, the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than two thousand rupees, and in the case of any other suit a decree for any matter of an amount or value of less than three hundred rupees, no costs shall be allowed to the plaintiff ;

and if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs as between attorney and client.

The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court.

CHAPTER V.

PROCEDURE IN SUITS.

23. The portions of the Code of Civil Procedure specified in the second schedule hereto annexed shall extend, and shall, so far as the same may, in the judgment of the Court, be applicable, be applied to the Small Cause Court ; and the procedure prescribed thereby shall be the procedure followed in the Court in all suits cognizable by it, except where such procedure is inconsistent with the procedure prescribed by any specific provisions of this Act :

1882.
Act 15.

Provided that the Court may, subject to the control of the Local Government, from time to time, by notification in the official Gazette, declare that any of the said portions of the said Code shall not extend and be applied to the Small Cause Court, or that any of such portions shall so extend and be applied with such modifications as the Court, subject to the control aforesaid, may think fit.

24. Except in cases of set-off under the Code of Civil Procedure, section 111, no written statement shall be received unless required by the Court.

No written statement except in cases of set-off.

25. When a period of eight days from the decision of a suit has expired without any application for a new trial or re-hearing of such suit having been made, or when any such application has been made within such period and such application has been refused, or the new trial or re-hearing (as the case may be) has ended, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record, shall, unless the document is impounded under section 143 of the Code of Civil Procedure, be entitled to receive back the same :

Return of documents admitted in evidence

Provided that a document may be returned at any time before any of such events on such terms as the Court may direct : Provided also that no document shall be returned which, by force of the decree, has become void or useless.

On the return of a document which has been admitted in evidence, a receipt shall be given, by the party receiving it, in a receipt-book to be kept for the purpose.

26. In any suit in which the defendant appears and does not admit the claim, and the plaintiff does not obtain a decree for the full amount of his claim, the Small Cause Court may, in its discretion, order the plaintiff to pay to the defendant, by way of satisfaction for his trouble and attendance, such sum as it thinks fit.

Compensation payable by plaintiff to defendant in certain cases.

When any claim preferred, or objection made, under section 278 of the Code of Civil Procedure, is disallowed, the Small Cause Court may, in its discretion, order the person preferring or making such claim or objection to pay to the decree-holder, or to the judgment-debtor, or to both, by way of satisfaction as aforesaid, such sum or sums as it thinks fit.

And when any claim or objection is allowed, the Court may award such compensation by way of damages to the claimant or objector as it thinks fit ; and the order of the Court awarding or refusing such compensation shall bar any suit in respect of injury caused by the attachment.

Any order under this section may, in default of payment of the amount payable thereunder, be enforced by the person in whose favour it is made against the person against whom it is made as if it were a decree of the Court.

27. Whenever the Small Cause Court issues a warrant for the arrest of a judgment-debtor or the attachment of his property, the decree-holder, or some other person on his behalf, shall accompany the officer of the Court entrusted with the execution of such warrant, and shall point out to such officer the judgment-debtor or the property to be attached, as the case may be.

Decree-holder to accompany officer executing warrant.

28. When the judgment-debtor under any decree of the Small Cause Court is a tenant of immoveable property, anything attached to such property, and which he might, before the termination of his tenancy, lawfully remove without the permission of his landlord, shall, for the purpose of the execution of such decree, be deemed to be moveable property, and may, if sold in such execution, be served by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing. 1882. Act 15.

Things attached to immoveable property and removeable by tenant to be deemed moveable in execution.

Court is a tenant of immoveable property, anything attached to such property, and which he might, before the termination of his tenancy, lawfully remove without the permission of his land-

lord, shall, for the purpose of the execution of such decree, be deemed to be moveable property, and may, if sold in such execution, be served by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.

29. Whenever any judgment-debtor, who has been arrested, or whose property has been seized in execution of a decree of the Small Cause Court, offers security to the satisfaction of such Court for payment of the amount which he has been ordered to pay and the costs, the Court may order him to be discharged or the property to be released.

30. Whenever it appears to the Small Cause Court that any judgment-debtor under its decree is unable, from sickness, poverty, or other sufficient cause, to pay the amount of the decree, or, if such Court has ordered the same to be paid in instalments, the amount of any instalment thereof, it may, from time to time, for such time and upon such terms as it thinks fit, suspend the execution of such decree and discharge the debtor, or make such order as it thinks fit.

31. If the judgment-debtor under any decree of the Small Cause Court has not, within the local limits of its jurisdiction, moveable property sufficient to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution—

(a) in the case of execution against immoveable property situate within such local limits—to the High Court;

(b) in all other cases—to any Civil Court within the local limits of whose jurisdiction such judgment-debtor, or any moveable or immoveable property of such judgment-debtor, may be found.

The procedure prescribed by the Code of Civil Procedure for the execution of decrees by Courts other than those which made them shall be the procedure followed in such cases.

32. Notwithstanding anything contained in the Code of Civil Procedure as applied by this Act, any minor may institute a suit for any sum of money, not exceeding five hundred rupees, which may be due to him under section 70 of the Indian Contract Act, 1872, for wages or piece-work or for work as a servant, in the same manner as if he were of full age.

33. Any non-judicial or quasi-judicial act which the Code of Civil Procedure as applied by this Act requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code as so applied, may be done by the Registrar of the Small Cause Court, or by such other officer of that Court as that Court may, from time to time, appoint in this behalf.

The High Court may, from time to time, by rule, declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

1882. 34. The suits cognizable by the Registrar under section fourteen shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same :

Act 15. Registrar to hear and determine suits like a Judge.

Provided that, subject to the control of the Chief Judge, any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar.

35. The Registrar may receive applications for the execution of decrees of any value passed by the Court, and may commit and discharge judgment-debtors, and make any order in respect thereof which a Judge of the Court might make under this Act.

Registrar may execute all decrees with the same powers as a Judge

36. Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court.

Decrees and orders of Registrar to be subject to new trial as if made by a Judge.

CHAPTER VI.

NEW TRIALS AND RE-HEARING.

37. Save as is herein specially provided, every decree and order of the Small Cause Court in a suit shall be final and conclusive ; but the Court may, on application of either party, made within eight days from the date of the decree or order in any suit (not being a decree passed under section 522 of the Code of Civil Procedure), order a new trial to be held, or alter, set aside, or reverse the decree or order, upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings.

Judgments and orders of Court final.

Power to order new trial in Small Cause Court.

38. Any party may, within eight days after the judgment in any suit in the Small Cause Court in which the amount or value of the subject-matter exceeds one thousand rupees, apply to the High Court for an order that such suit may be re-heard in the High Court.

Application for re-hearing in High Court.

Such application shall be supported by affidavits, and, in case the applicant has appeared in the Small Cause Court by advocate, vakil, attorney, or pleader, by a certificate from such advocate, vakil, attorney, or pleader, that, in his opinion, there are good grounds for re-hearing the suit, and if, on hearing such application, the High Court is of opinion that there has been a miscarriage or failure of justice, or that there are other good grounds for such re-hearing, the Court shall make an order *ex parte*, on such terms as it thinks fit, for such re-hearing, and fix a day for the same, whereof notice shall be given to the opposite party.

The rules contained in sections 545, 546, and 547 of the Code of Civil Procedure, relating to staying and executing decrees under appeal, shall apply in the case of applications under this section as if such applications were appeals from the decisions of the Small Cause Court.

39. On the day fixed under section thirty-eight or on any other day to which the re-hearing may be adjourned, the High Court, or some Judge thereof, shall proceed to re-hear and determine the case as if the same were a suit brought in such High Court in its ordinary original civil jurisdiction, in which the plaintiff in the Small Cause Court was plaintiff, and the defendant in such Court was defendant, and in which written statements had not been ordered to be filed ; and, except as herein otherwise provided, all the practice and procedure of such

Procedure at re-hearing.

High Court in respect of suits brought in its ordinary original civil jurisdiction shall be followed in suits re-heard under this section: Provided that there shall not be any appeal from any judgment, decree, or order under this section. 1882.
Act 15.

40. Every decree or order made by any High Court upon any such re-hearing may either be executed by such High Court in the same manner as other decrees or orders of such Court, or may, in the discretion of the High Court, be remitted to the Small Cause Court for execution.

CHAPTER VII.

RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY.

41. When any person has had possession of any immoveable property situate within the local limits of the Small Cause Court's jurisdiction, and of which the annual value at a rack-rent does not exceed one thousand rupees, as the tenant, or by permission, of another person, or of some person through whom such other person claims,

and such tenancy or permission has determined or been withdrawn, and such tenant or occupier or any person holding under or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

such other person (hereinafter called the applicant) may apply to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

42. The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure for the service of a summons on a defendant.

43. If the occupant does not appear at the time appointed, and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section forty-one, be entitled to an order addressed to a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order.

Explanation.—If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section.

44. Any such order shall justify the bailiff to whom it is addressed in entering after the hour of six in the morning and before the hour of six in the afternoon upon the property named therein, with such assistants as he thinks necessary, and giving possession of such property to the applicant: and no suit or prosecution shall be maintainable against any Judge or officer of the Small Cause Court by whom any such order as aforesaid was issued, or against any bailiff or other person by whom the same was executed,

Summons against person occupying property without leave.

Service of summons.

Order for possession.

Such order to justify bailiff entering on property and giving possession.

Bar to proceedings against Judge or officer for issuing, &c., order or summons.

1882. or by whom any such summons as aforesaid was served, for the issue, execution, or service of any such order or summons, by reason only that the applicant was not entitled to the possession of the property.

45. When the applicant, at the time of applying for any such order as aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed, on account of any error, defect, or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser; but any person aggrieved may bring a suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect, or irregularity:

when no such damage is proved, the suit shall be dismissed; and when such damage is proved, but the amount of the compensation assessed by the Court does not exceed ten rupees, the Court shall award to the plaintiff no more costs than compensation, unless the Judge who tries the case certifies that in his opinion full costs should be awarded to the plaintiff.

46. Nothing herein contained shall be deemed to protect any applicant obtaining possession of any property under this chapter from a suit by any person deeming himself aggrieved thereby, when such applicant was not, at the time of applying for such order as aforesaid, entitled to the possession of such property.

And when the applicant was not, at the time of applying for any such order as aforesaid, entitled to the possession of such property, the application for such order, though no application for order in such case an act of trespass. property, the application for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant.

47. Whenever, on an application being made under section forty-one, the occupant binds himself, with two sureties, in a bond for such amount as the Small Cause Court thinks reasonable, having regard to the value of the property and the probable costs of the suit next hereinafter mentioned, to institute, without delay, a suit in the High Court against the applicant for compensation for trespass, and to pay all the costs of such suit in case he does not prosecute the same, or in case judgment therein is given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suit is disposed of.

If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section forty-three.

Nothing contained in section twenty-two shall apply to suits under this section.

48. In all proceedings under this chapter, the Small Cause Court shall, as far as may be, and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the Code of Civil Procedure.

49. Recovery of the possession of any immoveable property under this chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto.

CHAPTER VIII.

1882.

DISTRESSERS.

Act 15.

50. This chapter extends to every place within the local limits of the

Local extent of chapter.

ordinary original civil jurisdictions of the High Courts of Judicature at Fort William, Madras, and Bombay. But nothing contained in this chapter applies—

(a) to any rent due to Government;

(b) to any rent which has been due for more than twelve months before the application mentioned in section fifty-three.

51. The Judges of the Small Cause Court may appoint four or more

Appointment of bailiffs and appraisers.

persons to be bailiffs and appraisers for the purpose of this chapter, and may, from time to time, with the previous sanction of the Local Government, fix such remuneration for the services of such officers as the said Judges thinks fit, and may suspend or remove them.

52. The persons so appointed shall give security, to be approved by the

Security to be given by appointees.

said Judges, faithfully to discharge the duties of their office, and they shall be deemed to be public servants within the meaning of the Indian Penal Code.

53. Any person claiming to be entitled to arrears of rent of any house

Application for distress-warrant.

or premises to which this chapter extends, or his duly constituted attorney, may apply to any Judge of the Small Cause Court, or to the Registrar of the Small Cause Court, for such warrant as is hereinafter mentioned.

The application shall be supported by an affidavit or affirmation to the effect of the form (marked A) in the third schedule hereto annexed.

54. The Judge or Registrar may thereupon issue a warrant under his

Issue of distress-warrant.

hand and seal, and returnable within six days, to the effect of the form (marked B) contained in the same schedule addressed to any one of such bailiffs.

The Judge or Registrar may, at his discretion, upon personal examination of the person applying for such warrant, decline to issue the same.

Time for distress.

55. Every distress under this chapter shall be made after sunrise and before sunset, and not at any other time.

56. The bailiff directed to make the distress may force open any stable,

What places bailiff may force open.

outhouse, or other building, and may also enter any dwelling-house the outer door of which may be open, and may break open the door of any room in such dwelling-house for the purpose of seizing property liable to be seized under this chapter:

Provided that he shall not enter or break open the door of any room appropriated for the zanáná or residence of women, which, by the usage of the country, is considered private.

57. In pursuance of the warrant aforesaid, the bailiff shall seize the

Property which may be seized.

moveable property found in or upon the house or premises mentioned in the warrant and belonging to the person from whom the rent is claimed (hereinafter called the debtor), or such part thereof as may, in the bailiff's judgment, be sufficient to cover the amount of the said rent, together with the costs of the said distress:

Provided that the bailiff shall not seize—

- (a) things in actual use ; or
- (b) tools and implements not in use, where there is other moveable property in or upon the house or premises sufficient to cover such amount and costs ; or
- (c) the debtor's necessary wearing apparel ; or
- (d) goods in the custody of the law.

58. The bailiff may impound or otherwise secure the property so seized in or on the house or premises chargeable with the rent.

Impounding distress.

59. On seizing any property under section fifty-seven, the bailiff shall make an inventory of such property, and shall give a notice in writing to the effect of the form (marked C) in the third schedule hereto annexed to the debtor, or to any other person upon his behalf in or upon the said house or premises.

Inventory.

Notice of intended appraisal and sale.

* Copies of inventory and notice to be filed.

The bailiff shall, as soon as may be, file in the Small Cause Court copies of the said inventory and notice.

60. The debtor, or any other person alleging himself to be the owner of any property seized under this chapter, or the duly constituted attorney of such debtor or other person, may, at any time within five days from such seizure, apply to any Judge of the said Court to discharge or suspend the warrant, or to release a distrained article, and such Judge may discharge or suspend such warrant, or release such article accordingly, upon such terms as he thinks just ;

and any of the Judges of the said Court may, in his discretion, give reasonable time to the debtor to pay the rent due from him.

Upon any such application, the costs attending it, and attending the issue and execution of the warrant, shall be in the discretion of the Judge, and shall be paid as he directs.

61. If any claim is made to, or in respect of, any property seized under this chapter, or in respect of the proceeds or value thereof, by any person not being the debtor, the Registrar of the Small Cause Court, upon the application of the bailiff who seized the property, may issue a summons calling before the Court the claimant and the person who obtained the warrant.

And thereupon any suit which may have been brought in the High Court in respect of such claim shall be stayed, and any Judge of the High Court, on proof of the issue of such summons and that the property was so distrained, may order the plaintiff to pay the costs of all proceedings in such suit after the issue of such summons.

And a Judge of the Small Cause Court shall adjudicate upon such claim, and make such order between the parties in respect thereof and of the cost of the proceedings as he thinks fit ;

and such order shall be enforced as if it were an order made in a suit brought in such Court.

The procedure in Small Cause Courts in cases under this section shall conform, as far as may be, to the procedure in an ordinary suit in such Courts.

62. In any case under section sixty or section sixty-one, the Judge by whom the case is heard may award such compensation by way of damages to the applicant or claimant (as the case may be) as the Judge thinks fit,

Power to award compensation to debtor or claimant.

and may, for that purpose, make any enquiry he thinks necessary ; 1882.

and the order of the Judge awarding or refusing such compensation shall bar any suit for the recovery of compensation for any damage caused by the distress. Act 15.

63. In any case under section sixty or section sixty-one, if the value of the subject-matter in dispute exceeds one thousand rupees, the applicant or claimant may apply to the High Court to transfer the case to itself, and the High Court, on being satisfied that it is expedient that the case should be disposed of by itself, may direct the case to be transferred accordingly, and may thereupon alter or set aside any order passed in the case by a Judge of the Small Cause Court, and may make such order therein as the High Court thinks fit.

Every application under this section shall be made within seven days from the date of the seizure of the subject-matter in dispute.

In granting applications under this section, the High Court may impose such terms as to payment of, or giving security for, costs or otherwise as it thinks fit.

The procedure in cases transferred under this section shall conform, as far as may be, to the procedure in suits before the High Court in the exercise of its ordinary original civil jurisdiction ; and orders made under this section may be executed as if they were made in the exercise of such jurisdiction ; and every such order awarding or refusing compensation shall bar any suit for the recovery of compensation for any damage caused by the distress which gave rise to the case wherein such order was made.

64. In default of any order to the contrary by a Judge of the Small Cause Court or by the High Court, any two of the said bailiffs may, at the expiration of five days from a seizure of property under this chapter, appraise the property so seized, and give the debtor notice in writing to the effect of the form (marked D) in the third schedule hereto annexed.

Appraisement.

Notice of sale.

The bailiffs shall file in the Small Cause Court a copy of every notice given under this section.

65. In default of any such order to the contrary, the distrained property shall be sold on the day mentioned in such notice, and the said bailiffs shall, on realizing the proceeds, pay over the amount thereof to the Registrar of the Small Cause Court ; and such amount shall be applied first in payment of the costs of the said distress, and then in satisfaction of the debt ; and the surplus (if any) shall be returned to the debtor :

Sale.

Application of proceeds.

Provided that the debtor may direct that the sale shall take place in any other manner, first giving security for any extra costs thereby occasioned.

66. No costs of any distress under this chapter shall be taken or demanded except those mentioned in the part (marked E) of the third schedule hereto annexed.

Costs of distresses.

The Judges of the Small Cause Court may apply the sum so raised as costs towards the payment of the contingent charges and remuneration of the said bailiffs, as appears to the said Judges expedient.

67. The Registrar of the Small Cause Court shall keep a book in which all sums received as costs upon distresses made under this chapter, and all sums paid as remuneration to the said bailiffs, and all contingent charges incurred in respect of such distresses, shall be duly entered.

Account of costs and proceeds.

1882.

Act 15.

He shall also enter in the said book all sums realized by sale of the property distrained and paid over to landlords under the provisions of this chapter.

Bar of distresses except under this chapter.

And any person, except a bailiff appointed under section fifty-one, levying or attempting to levy any such distress, shall, on conviction before a Presidency Magistrate, be

liable to be punished with fine which may extend to five hundred rupees, and with imprisonment for a term which may extend to three months, in addition to any other liability he may have incurred by his proceedings.

CHAPTER IX.

REFERENCES TO HIGH COURT.

69. If two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under Chapter VII. of this Act, and differ in their opinion as to any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits,

or if in any suit or any such proceeding, in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises, and either party so requires,

the Small Cause Court shall draw up a statement of the facts of the case, and refer such statement, under section 617 of the Code of Civil Procedure, for the opinion of the High Court, and shall either reserve judgment or give judgment contingent upon such opinion.

70. When judgment is given under section sixty-nine contingent upon the opinion of the High Court, the party against whom judgment is given shall at once furnish security, to be approved by the Small Cause Court, for the costs of the reference to the High Court and for the amount of such judgment :

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court, and the same has been paid accordingly.

Unless such security as aforesaid is at once furnished, the party against whom such contingent judgment has been given shall be deemed to have submitted to the same.

If no such security given, party to be deemed to have submitted to judgment.

CHAPTER X.

FEES AND COSTS.

Institution-fee.

71. A fee not exceeding—

(a) when the amount or value of the subject-matter does not exceed five hundred rupees—the sum of two annas in the rupee on such amount or value,

(b) when the amount or value of the subject-matter exceeds five hundred rupees—the sum of sixty-two rupees eight annas, and one anna in the rupee on the excess of such amount or value, over five hundred rupees,

shall be paid on the plaint in every suit, and every application under section thirty-eight or section forty-one ; and no such plaint or application shall be received until such fee has been paid.

An additional fee of ten rupees shall be paid on the filing of every agreement under section twenty. 1882.

Act 15.

72. The fees specified in the third and fourth columns of the fourth schedule hereto annexed shall be paid previous to the issue in any suit or in any proceeding under Chapter VII. of this Act of the processes, to which the said columns respectively relate, by the persons on whose behalf such processes are issued, when the amount or value of the subject-matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column of the said schedule.

73. Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of Repayment of half fees on settlement before hearing. all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.

74. The Small Cause Court may, whenever it thinks fit, receive and Fees and costs of poor persons. register suits instituted, and applications under section forty-one made, by poor persons, and may issue processes on behalf of such persons, without payment, or on a part-payment of the fees mentioned in sections seventy-one and seventy-two.

75. The Local Government may, from time to time, by notification in the official Gazette, vary the amount of the fees payable under sections seventy-one and seventy-two: Power to vary fees.

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

76. The expense of employing an advocate, vakil, attorney, or other legal practitioner incurred by any party, shall not be allowed as costs in any suit or in any proceeding under Chapter VII. of this Act, in the Small Cause Court, in which suit or proceeding the amount or value of the subject-matter does not exceed twenty rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable. Expense of employing legal practitioners.

77. Nothing contained in this chapter shall affect the provisions of sections 3, 5, and 25 of the Court Fees Act, 1870, saved. Sections 3, 5, and 25 of Court Fees Act, 1870, saved.

CHAPTER XI.

MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS.

78. The Chief Judge may, by order, fine, in an amount not exceeding one month's salary, any clerk, bailiff, or other inferior ministerial officer of the Court who is guilty of misconduct or neglect in the performance of the duties of his office, and such fine may be deducted from his salary. Power to fine officers.

79. If any clerk, bailiff, or other inferior ministerial officer of the Small Cause Court, who is employed as such in the execution of any order or warrant, loses, by neglect, connivance, or omission, an opportunity of executing such order or warrant, he shall be liable, by order of the Chief Judge, on the application of the person injured by such neglect, connivance, or omission, to pay such sum, not exceeding in any case the sum for which the said order or warrant was issued, as, in the opinion of the Chief Judge, represents the amount of the damage sustained by such person thereby. Default of bailiff or other officer in execution of order or warrant.

1882. **Act 15.** 80. If any clerk, bailiff, or other inferior ministerial officer of the Small Cause Court, is charged with extortion or misconduct while acting under colour of its process, or with not duly paying or accounting for any money levied by him under its authority, the Court may inquire into such charge, and may make such order for the repayment or payment of any money so extorted, or of any money so levied as aforesaid, and of damages and costs, by such officer, as it thinks fit.
81. For the purposes of any inquiry under this chapter, the Small Cause Court shall have all the powers of summoning and enforcing the attendance of witnesses and compelling the production of documents which it possesses in suits under this Act.
82. Any order under this chapter for the payment or repayment of money may, in default of payment of the amount payable thereunder, be enforced by the person to whom such amount is payable as if the same were a decree of the Small Cause Court in his favour.

CHAPTER XII.

CONTEMPT OF COURT.

83. When any such offence as is described in section 175, 178, 179, 180, or 228 of the Indian Penal Code, is committed in the view or presence of the Small Cause Court, the Court may cause the offender to be detained in custody; and, at any time before the rising of the Court on the same day, may, if it thinks fit, take cognizance of the offence, and punish the offender with fine which may extend to two hundred rupees, and in default of payment of such fine with imprisonment in the civil jail for a term which may extend to one month, unless such fine is sooner paid.

84. In every such case the Court shall record the facts constituting the offence, the statement (if any) made by the offender, and the finding and sentence.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court, when interrupted or insulted, was sitting, and the nature of the interruption or insult offered.

85. If the Court considers that a person accused of any offence referred to in section eighty-three, and committed in its view or presence, should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or if the Court is, for any other reason, of opinion that the case should not be disposed of under section eighty-three, the Court, after recording the facts constituting the offence, and the statement of the accused as hereinbefore provided, may forward the case to a Presidency Magistrate, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, may forward him under custody to such Magistrate.

Such Magistrate shall deal with the accused person in the manner provided by the Presidency Magistrates' Act, 1877; and may sentence the offender to punishment as provided in the section of the Indian Penal Code under which he is charged.

1882.

Act 15.

86. When the Court has, under section eighty-three or section eighty-five, punished an offender, or forwarded him to a Presidency Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender, or remit the punishment on his submission to the order or requisition of the Court, or on apology being made to its satisfaction.

87. If any witness before the Small Cause Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, the Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to answer such questions or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section eighty-three or section eighty-five.

88. Any person deeming himself aggrieved by an order under section eighty-three or section eighty seven may appeal to the High Court, and the provisions of the Presidency Magistrates' Act, 1877, relating to appeals, shall, so far as may be, apply to appeals under this section.

CHAPTER XIII.

MISCELLANEOUS.

89. Notices to produce documents, summonses to witnesses, and all other processes issued in the exercise of any jurisdiction conferred on the Small Cause Court by this Act, except summonses to defendants and writs of execution, may, if the Court by general or special order so directs, be served by such persons as the Court, from time to time, appoints in this behalf.

90. The Small Cause Court shall keep such registers, books, and accounts, and submit to the High Court such statements and returns, as may, subject to the approval of the Local Government, be prescribed by the High Court.

91. The Small Cause Court shall comply with such requisitions as may, from time to time, be made by the Local Government or High Court for records, returns, and statements in such form and manner as such Government or Court, as the case may be, thinks fit.

92. The Small Cause Court shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the Local Government.

Such list, when it has received such approval, shall be published in the local official Gazette, and the said holidays and vacations shall be observed accordingly.

93. The Governor-General and Members of his Council, the Governors of Fort St. George and Bombay, and the Members of their respective Councils, the Lieutenant-Governors, and Members of their respective Councils, shall be exempt from arrest by Court.

1882. vernor of Bengal, and the Chief Justices and Judges of the High Courts established under the twenty-fourth and twenty-fifth of Victoria, chapter **Act 15.** 104, shall not be liable to arrest by order of the Small Cause Court.

No suit to lie upon decree of Court.

94. No suit shall lie on any decree of the Small Cause Court.

95. Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such place as the Local Government, from time to time, appoints in this behalf.

Place of imprisonment.

96. If any person against whom any suit is brought for anything purporting to be done by him under this Act has, before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover.

Tender in suit for anything done under Act.

97. All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence was committed.

Limitation of prosecutions.

THE FIRST SCHEDULE.

(See section 2.)

ENACTMENTS REPEALED.

A.—Charters of the Supreme Courts.

Date.		Extent of repeal.
26th March, 1774.	Charter of the Supreme Court at Fort William.	Clause 21.
26th December, 1800.	Charter of the Supreme Court at Madras.	Clause 47.
8th December, 1823.	Charter of the Supreme Court at Bombay.	Clause 59.

THE FIRST SCHEDULE—(concluded).

(See section 2.)

B.—Acts of the Governor-General in Council.

Number and year.	Subject or short title.	Extent of repeal.
IX. of 1850	For the more easy recovery of small debts and demands in Calcutta, Madras, and Bombay.	So much as has not been repealed.
XX. of 1857	To amend Act IX. of 1850	The whole.
XXVI. of 1864	To extend the jurisdiction of the Courts of Small Causes at Calcutta, Madras, and Bombay, and to provide for the appointment of an increased number of Judges of these Courts.	So much as has not been repealed.
I. of 1875	To regulate Distresses for Rents in the Presidency-towns.	The whole.
X. of 1877	The Code of Civil Procedure	Section eight, para. 2.

C.—Acts of the Governor of Bombay in Council.

Number and year.	Subject.	Extent of repeal.
VI. of 1864	For the better regulation of the diet-money of persons imprisoned by the Bombay Court of Small Causes.	So much as has not been repealed.

THE SECOND SCHEDULE.

(See section 23.)

PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT.

PRELIMINARY : Section 2, Interpretation-clause.

CHAPTER I.—Of the Jurisdiction of the Courts and *Res Judicata*, except section 11.

CHAPTER II.—Of the Place of suing, except sections 15 to 19 (both inclusive), section 20, paragraph 4, sections 22, 23, and 24, and section 25, paragraphs 2 and 3.

CHAPTER III.—Of Parties and their Appearances, Applications, and Acts, except section 37, clause (b), and the last paragraph.

CHAPTER IV.—Of the Frame of the Suit, except section 42 and section 44, rule a.

CHAPTER V.—Of the Institution of Suits, except section 53, clause (e), section 55, section 57, clause (b), and sections 58 and 62.

CHAPTER VI.—Of the Issue and Service of Summons, except, in section 64, the words "and the copies or concise statements required by section 58 have been filed," and sections 65, 66, and 86.

CHAPTER VII.—Of the Appearance of the Parties and Consequence of Non-appearance.

THE SECOND SCHEDULE—(concluded).

(See section 23.)

PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT.

CHAPTER	VIII.—Of Written Statements and Set-off, except sections 110, 112, and 113.
CHAPTER	IX.—Of the Examination of the Parties by the Court, except section 119.
CHAPTER	X.—Sending for Records, and Production, &c., of Documents, sections 137 (except paragraph 2), 138, 140 (except the proviso and the last six words), 141 (except the third sentence), 142, 143, and 145.
CHAPTER	XI.—Settlement of issues, sections 150 and 151.
CHAPTER	XII.—Disposal of the Suit at the first hearing, except sections 154 and 155.
CHAPTER	XIII.—Of Adjournments.
CHAPTER	XIV.—Of the Summoning and Attendance of Witnesses, except sections 168, 169, 170, and 175.
CHAPTER	XV.—Of the Hearing of the Suit and Examination of Witnesses, except sections 182 to 191 (both inclusive).
CHAPTER	XVI.—Of Affidavits.
CHAPTER	XVII.—Of Judgment and Decree, except sections 200, 201, 202, 204, 207, and 211 to 215 (both inclusive).
CHAPTER	XVIII.—Of Costs.
CHAPTER	XIX.—Of the Execution of Decrees, section 230, first two clauses, sections 231 to 236 (both inclusive), 243 to 259 (both inclusive), 266 (so far as relates to the attachment of moveable property or decrees therefor), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 303 (both inclusive), 328 to 333 (both inclusive), 336 (except the last three clauses), and 337 to 343 (both inclusive).
CHAPTER	XXI.—Of the Death, Marriage, and Insolvency of Parties.
CHAPTER	XXII.—Of the Withdrawal and Adjustment of Suits.
CHAPTER	XXIII.—Of Payment into Court.
CHAPTER	XXIV.—Of Requiring Security for Costs.
CHAPTER	XXV.—Of Commissions, except section 396.
CHAPTER	XXVII.—Suits by or against Government or public officers.
CHAPTER	XXVIII.—Suits by Aliens and by and against Foreign and Native Rulers, except section 433.
CHAPTER	XXIX.—Suits by and against Corporations and Companies.
CHAPTER	XXX.—Suits by and against Trustees, Executors, and Administrators.
CHAPTER	XXXI.—Suits by and against Minors and Persons of Unsound Mind
CHAPTER	XXXII.—Suits by and against Military Men.
CHAPTER	XXXIII.—Interpleader.
CHAPTER	XXXIV.—Of Arrest and Attachment before Judgment, except as regards the attachment of immoveable property.
CHAPTER	XXXV.—Interlocutory orders, sections 498, 499, 500, and 502.
CHAPTER	XXXVI.—Appointment of Receivers, section 503.
CHAPTER	XXXVII.—Reference to Arbitration, except the provisions of section 522 as to appeals.
CHAPTER	XXXVIII.—Of Proceedings on Agreement of Parties, except so much of section 527, clause b, as relates to immoveable property.
CHAPTER	XLVI.—Of Reference to and Revision by High Court.
CHAPTER	XLIX.—Miscellaneous, sections 640 to 651 (both inclusive).

THE THIRD SCHEDULE.

FORMS.

A.

[See section 53.]

*In the Small Cause Court for**A. B.* (Plaintiff),*versus**C. D.* (Defendant).

A. B. of , in the town of , maketh oath [or affirms]
 and saith that *C. D.* , of , is justly indebted to
 in the sum of Rs. for arrears of rent of the house and premises No. ,
 situated at , in the town of , due for months, to wit,
 from to , at the rate of Rs. per mensem.
 Sworn [or affirmed] before me the day of 188 .
 Judge [or Registrar].

B.

[See section 54.]

In the Small Cause Court for

FORM OF WARRANT.

I hereby direct you to distrain the moveable property of *C. D.*, on the house
 and premises situate at No. , in the town of , for the sum of Rs.
 and the costs of the distress, according to the provisions of Chapter VIII. of the
 Presidency Small Cause Courts Act, 1882. Dated day of 188

(Signed and Sealed.)

To *E. F.*, Bailiff and Appraiser.

C.

[See section 59.]

In the Small Cause Court for

FORM OF INVENTORY AND NOTICE.

(State particulars of property seized.)

Take notice that I have this day seized the moveable property contained in the
 above inventory for the sum of Rs., being the amount of months' rent
 due to *A. B.* at last, and that, unless you pay the amount thereof,
 together with the costs of this distress, within five days from the date hereof, or
 obtain an order from one of the Judges or the Registrar of the Small Cause Court
 to the contrary, the same will be appraised and sold pursuant to the provisions of
 Chapter VIII. of the Presidency Small Cause Courts Act, 1882. Dated the day
 of 188 .

(Signed) *E. F.*,To *C. D.*

Bailiff and Appraiser.

D.

[See section 64.]

In the Small Cause Court for

Take notice that we have appraised the moveable property seized on the day
 of , under the provisions of Chapter VIII. of the Presidency Small
 Cause Courts Act, 1882, of which seizure and property a notice and inventory were

PRESIDENCY SMALL CAUSE COURTS.

THE THIRD SCHEDULE—(concluded).

duly served upon you [or upon _____ on your behalf, as the case may be]
 under date the _____, and that the said property will be sold on the
 [two clear days at least after the date of the notice] at _____ pursuant to the
 provisions of the said Act. Dated this _____ day of _____ 188 .

(Signed) E. F.,

G. H.,

To C. D.

Bailiffs and Appraisers.

E.

[See section 66.]

In the Small Cause Court for

SCALE OF FEES TO BE LEVIED IN DISTRAINTS FOR HOUSE-RENT.

Sums sued for.				Affidavit and warrant to distrain.	Order to sell.	Commission.	Total.
Rs.	Rs.			Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
1	and under 5	...	...	0 4 0	0 8 0	0 8 0	1 4 0
5	"	10	...	0 8 0	0 8 0	1 0 0	2 0 0
10	"	15	...	0 8 0	0 8 0	1 8 0	2 8 0
15	"	20	...	0 8 0	1 0 0	2 0 0	3 8 0
20	"	25	...	0 12 0	1 0 0	2 8 0	4 4 0
25	"	30	...	1 0 0	1 0 0	3 0 0	5 0 0
30	"	35	...	1 0 0	1 0 0	3 8 0	5 8 0
35	"	40	...	1 0 0	1 8 0	4 0 0	6 8 0
40	"	45	...	1 4 0	2 0 0	4 8 0	7 12 0
45	"	50	...	1 8 0	2 0 0	5 0 0	8 8 0
50	"	60	...	2 0 0	2 0 0	6 0 0	10 0 0
60	"	80	...	2 8 0	2 8 0	6 8 0	11 8 0
80	to	100	...	3 0 0	3 0 0	7 0 0	13 0 0
Upwards of 100	...	...	...	3 0 0	3 0 0	7 per centum	.....

The above scale includes all expenses, except in suits where the tenant disputes the landlord's claim, and witnesses have to be subpoenaed, in which case each subpoena for sums under Rs. 40 must be paid for at four annas each, and twelve annas above that amount; and also where peons are kept in charge of property distrained, four annas per day must be paid per man.

THE FOURTH SCHEDULE.

[See section 72.]

FEES FOR SUMMONSES AND OTHER PROCESSES.

When the amount or value of the subject- matter exceeds	But does not exceed	Fee for sum- mons.	Fee for other processes.
Rs.	Rs.	Rs. A. P.	Rs. A. P.
0	10	0 2 0	0 2 0
10	20	0 4 0	0 4 0
20	50	0 8 0	0 8 0
50	100	1 0 0	1 0 0
100	200	1 4 0	2 0 0
200	300	1 8 0	3 0 0
300	400	1 12 0	4 0 0
400	500	2 0 0	5 0 0
500	600	2 4 0	6 0 0
600	700	2 8 0	7 0 0
700	800	2 12 0	8 0 0
800	900	3 0 0	9 0 0
900	1,000	3 4 0	10 0 0
1,000	1,100	3 6 0	10 8 0
1,100	1,200	3 8 0	11 0 0
1,200	1,300	3 10 0	11 8 0
1,300	1,400	3 12 0	12 0 0
1,400	1,500	3 14 0	12 8 0
1,500	1,600	4 0 0	13 0 0
1,600	1,700	4 2 0	13 8 0
1,700	1,800	4 4 0	14 0 0
1,800	1,900	4 6 0	14 8 0
1,900	2,000	4 8 0	15 0 0

PROBATE AND ADMINISTRATION ACT, NO. V. OF 1881.

RECEIVED THE G.-G.'S ASSENT ON THE 21ST JANUARY 1881.

An Act to provide for the grant of Probates of Wills and Letters of Administration to the estates of certain deceased persons.

WHEREAS it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the Indian Succession Act, 1865, does not apply ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called "The Probate and Administration Act, 1881 ;"

Local extent. It applies to the whole of British India ;

Commencement. and it shall come into force on the first day of April, 1881.

2. Chapters II. to XIII., both inclusive, of this Act, shall apply in the case of every Hindú, Muhammánadan, Buddhist, and person exempted under section 332 of the Indian Succession Act, 1865, dying before, on, or after the said first day of April, 1881 :

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day :

Provided also that, except in cases to which the Hindú Wills Act, 1870, applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras, and Bombay, and the territories for the time being administered by the Chief Commissioner of British Burma, and no High Court in exercise of the concurrent jurisdiction over such local area hereby conferred, shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor-General in Council, by a notification in the official Gazette, authorized it so to do.

Interpretation-clause. 3. In this Act, unless there be something repugnant in the subject or context,—

"province" includes any division of British India having a Court of the last resort :

1881.

Act 5.

"minor" means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed his age of eighteen years; and "minority" means the status of any such person:

"will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death:

"codicil" means an instrument made in relation to a will, and explaining, altering, or adding to its dispositions. It is considered as forming an additional part of the will:

"specific legacy" means a legacy of specified property:

"demonstrative legacy" means a legacy directed to be paid out of specified property:

"probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator:

"executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided:

"administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor; and

"District Judge" means the Judge of a principal Civil Court of original jurisdiction.

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

4. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

5. When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the province, whether in the British dominions, or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Administration with copy annexed of authenticated copy of will proved abroad.

6. Probate can be granted only to an executor appointed by the will.

Probate only to appointed executor.

7. The appointment may be express or by necessary implication.

Illustrations.

(a.) A wills that C be his executor if B will not. B is appointed executor by implication.

(b.) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(c.) Appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words :—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication. 1881. Act 5.

Persons to whom probate cannot be granted.

8. Probate cannot be granted to any person who is a minor or is of unsound mind.

Grant of probate to several executors simultaneously or at different times.

9. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first, then to A.

10. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Separate probate of codicil discovered after grant of probate.

Procedure when different executors appointed by codicil.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

11. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Accrual of representation to surviving executor.

12. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

Effect of probate.

To whom administration may not be granted.

13. Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

14. Letters of administration entitle the administration to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Effect of letters of administration.

15. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Acts not validated by administration.

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship;

Grant of administration where executor has not renounced.

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Exception.

17. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Form and effect of renunciation of executorship.

1881.

Act 5.

18. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved, and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Procedure where executor renounces or fails to accept within time limited.

19. When the deceased has made a will, but has not appointed an executor, or

when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will, but before he has administered all the estate of the deceased,

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

20. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Right to administration of representative of deceased residuary legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

22. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

Citation before grant of administration to legatee other than universal or residuary.

23. When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

CHAPTER III.

OF LIMITED GRANTS.

(a.)—*Grants limited in Duration.*

24. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of copy or draft of lost will.

25. When the will has been lost or destroyed, and no copy has been made, nor the draft preserved, probate may be granted of its contents, if they can be established by evidence. 1881.
Act 5.

26. When the will is in the possession of a person, residing out of the province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

27. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

(b.)—Grants for the Use and Benefit of Others having Right.

28. When any executor is absent from the province in which application is made, and there is no executor within the province willing to act, letters of administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

29. When any person, to whom, if present, letters of administration with the will annexed might be granted, is absent from the province, letters of administration with the will annexed may be granted to his agent, limited as above mentioned.

30. When a person entitled to administration in case of intestacy is absent from the province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before mentioned.

31. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

32. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

33. If a sole executor, or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates, applicable in the case of the deceased, be a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such

1881. person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.
Act 5.

34. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator; other than the right of distributing such estate; and every such administrator shall be subject to the immediate control of the Court, and shall act under its direction.

(c).—For Special Purposes.

35. If any executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

38. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has or have been granted is absent from the province within which the Court that has granted the probate or letters of administration is situate, such Court may grant, to any person whom it thinks fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

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Act 5.

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of the province, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as he thinks fit to be administrator ;

and in every such case letters of administration may be limited or not as the Judge thinks fit.

(d.)—Grants with Exception.

42. Whenever the nature of the case requires that an exception be made, probate of a will or letters of administration with the will annexed shall be granted subject to such exception.

43. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

(e.)—Grants of the Rest.

44. Whenever a grant, with exception, of probate or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f.)—Grants of Effects unadministered.

45. If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

46. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

47. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

48. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

1881.
Act 5.

49. If, after the grant of letters of administration will the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

Revocation or annulment for just cause.

50. The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just cause."

Explanation.—"Just cause" is—

1st, that the proceedings to obtain the grant were defective in substance ;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case ;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently ;

4th, that the grant has become useless and inoperative through circumstances.

Illustrations.

(a.) The Court by which the grant was made had no jurisdiction.

(b.) The grant was made without citing parties who ought to have been cited.

(c.) The will of which probate was obtained was forged or revoked.

(d.) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(e.) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(f.) Since probate was granted, a later will has been discovered.

(g.) Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.

(h.) The person to whom probate was, or letters of administration were, granted, has subsequently become of unsound mind.

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

Jurisdiction of District Judge in granting and revoking probates, &c.

52. The High Court

Power to appoint Delegate of District Judge to deal with non-contentious cases.

cases, within such local limits as it may from time to time prescribe :

Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called " District Delegates."

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as

District Judge's powers as to grant of probate and administration.

suit or proceeding depending in his Court.*

are by law vested in him in relation to any civil

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Act 5.

54. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person ;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same,

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.

56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had, at the time of his decease, a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

57. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

58. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

59. Probate or letters of administration shall have effect over all the property, moveable or immoveable, of the deceased throughout the province in which the same is granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted :

Provided that probates and letters of administration granted by a High Court established by Royal Charter, or by the Chief Court of the Panjab, or by the Court of the Recorder of Rangoon, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

60. Whenever a grant of probate or letters of administration is made by a Court with such effect as last aforesaid, the Registrar, or such other officer as the Court making the grant appoints in this behalf, shall send to each of the other Courts empowered to make such grants, a certificate to the following effect :—

“ I, *A. B.*, Registrar [*or as the case may be*] of the High Court of Judicature at _____ [*or as the case may be*], hereby certify that on the _____ day of _____ 188 _____ the High Court of Judicature at _____ [*or as the case may be*] granted probate of the will [*or letters of administration of the estate*] of *C. D.*, late of _____, deceased, to *E. F.*, of _____, and *G. H.*, of _____, and that such probate [*or letters*] has [*or have*] effect over all the property of the deceased throughout the whole of British India ;”
and such certificate shall be filed by the Court receiving the same.

61. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

62. Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or, in the cases mentioned in sections twenty-four, twenty-five, and twenty-six, a copy, draft, or statement of the contents thereof annexed, and stating

the time of the testator's death,
that the writing annexed is his last will and testament, or as the case may be,
that it was duly executed,
the amount of assets which are likely to come to the petitioner's hands ;
and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars the petition shall further state
when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge ; and,
when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

63. In cases wherein the will, copy, or draft, is written in any language other than English, or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed ; or, if the will, copy, or draft, be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner :—

“ I (*A. B.*) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof.”

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64. Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating

the time and place of the deceased's death,
the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,
the amount of assets which are likely to come to the petitioner's hands.

In addition to these particulars the petition shall further state,
when the application is to a District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property situate within the jurisdiction of the Judge; and

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

65. Every person applying to any of the Courts mentioned in the

Additional statements in proviso to section fifty-nine for probate of a will
petition for probate, &c. or letters of administration of an estate, intended

to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by sections sixty-two and sixty-four, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section fifty-nine may, if it think fit, reject the same.

66. The petition for probate or letters of administration shall in all

Petition for probate or administration to be signed and verified, cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect :—

"I (A. B.), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

67. Where the application is for probate, or for letters of administration

Verification of petition for probate by one witness to will. with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following :—

"I (C. D.), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (or mark) thereto (as the case may be) (or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

68. If any petition or declaration which is hereby required to be

Punishment for false averment in petition or declaration. verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment

according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

69. In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit, to examine the petitioner in person upon oath, and also

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to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat. 71. The caveat shall be to the following effect:—

"Let nothing be done in the matter of the estate of A. B., late of , deceased, who died on the day of at , without notice to C. D., of ."

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By "contention" is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

76. In every case in which there is contention, or the District Delegate 1881.

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Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

76. Whenever it appears to the Judge or District Delegate that probate

Grant of probate to be under seal of Court.

of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

"I, _____, Judge of the District of _____, [or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate's jurisdiction)],
Form of such grant.

hereby make known that on the _____ day of _____ in the year _____ the last will of _____, late of _____, a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to _____, the executor in the said will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

"The _____ day of _____ 18 ____."

77. Whenever it appears to the District Judge or District Delegate

Grant of letters of administration to be under seal of Court.

that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following:—

"I, _____, Judge of the District of _____, [or Delegate appointed for granting probate or letters of administration (here insert the limits of the Delegate's jurisdiction)],
Form of such grant.

hereby make known that on the _____ day of _____ letters of administration (with or without the will annexed, as the case may be) of the property and credits of _____, late of _____, deceased, were granted to _____, the father (or as the case may be) of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

"The _____ day of _____ 18 ____."

78. Every person to whom any grant of letters of administration is

Administration-bond.

committed, and, if the Judge so direct, any person to whom probate is granted, shall give a bond to

the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

1881.

Act 5.

79. The Court may, on application made by petition, and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some proper person, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

80. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

Time before which probate or administration shall not be granted.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him: and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

Filing of original wills of which probate or administration with will annexed granted.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

Grantee of probate or administration alone to sue, &c., until same revoked.

83. In any case before the District Judge in which there is contention, the proceeding shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Procedure in contentious cases.

84. Where any probate is, or letters of administration are, revoked, all payments *bond fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same; and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Payment to executor or administrator before probate or administration revoked.

Right of such executor or administrator to recoup himself.

85. Notwithstanding anything hereinbefore contained, it shall, except in cases to which the Hindú Wills Act, 1870, applies, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

Power to refuse letters of administration.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals. 1881.
Act 5.

87. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

In respect of causes of action surviving deceased, and debts due at death.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Demands and rights of suit of or against deceased survive to and against executor or administrator.

Illustration.

A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

90. An executor or administrator has power, with the consent of the Court by which the probate or letters of administration was or were granted, to dispose of the property of the deceased, either wholly or in part, in such manner as he thinks fit:

Power of executor or administrator to dispose of property.

Provided that the Court may, when granting probate or letters of administration, exempt the executor or administrator from the necessity of obtaining such consent as to the whole or any specified part of the assets of the deceased.

Illustrations.

(a.) The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it with the consent of the Court. The sale is valid.

(b.) The executor, in the exercise of his discretion, mortgages a part of the immovable estate of the deceased with the consent of the Court. The mortgage is valid.

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Purchase by executor or administrator of deceased's property.

1881. 92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.
- Act 5. Powers of several executors or administrators exercisable by one.

Illustrations.

- (a.) One of several executors has power to release a debt due to the deceased.
 (b.) One has power to surrender a lease.
 (c.) One has power to sell the property of the deceased, moveable or immoveable.
 (d.) One has power to assent to a legacy.
 (e.) One has power to endorse a promissory note payable to the deceased.
 (f.) The will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

93. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.
- Survival of powers on death of one of several executors or administrators.

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.
- Powers of administrator of effects unadministered.

95. An administrator during minority has all the powers of an ordinary administrator.
- Powers of administrator during minority.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.
- Powers of married executrix or administratrix.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.
- As to deceased's funeral ceremonies.

98. An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same has or have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that have come to his hands, and the manner in which they have been applied or disposed of.
- Inventory and account.

99. In all cases where it is sought to obtain a grant of probate or letters of administration intended to have effect throughout the whole of British India, the executor, or the person applying for administration, shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India:
- Inventory to include property in any part of British India.

And the value of such property situate in each province shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby, wheresoever situate within British India.

1881.
Act 5.

100. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

As to property of, and debts owing to, deceased.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

102. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Expenses to be paid next after such expenses.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan, or domestic servant, are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

Wages for certain services to be next paid, and then other debts.

Save as aforesaid, all debts to be paid equally and rateably.

104. Save as aforesaid, no creditor is to have a right of priority over another.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

Debts to be paid before legacies.

105. Debts of every description must be paid before any legacy.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Executor or administrator not bound to pay legacies without indemnity.

107. If the assets, after payment of debts, necessary expenses, and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions;

Abatement of general legacies.

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another.

108. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy when assets sufficient to pay debts.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted,

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

1881. and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Act 5.

110. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond-ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

111. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

CHAPTER VIII.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

Assent necessary to complete legatee's title.

112. The assent of the executor is necessary to complete a legatee's title to his legacy.

Illustrations.

(a.) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b.) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

113. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Effect of executor's assent to specific legacy.

Nature of assent.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Illustrations.

(a.) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b.) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c.) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d.) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e.) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

114. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Conditional assent.

Illustrations.

(a.) A bequeaths to B his lands of Sultánpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b.) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

115. When the executor is a legatee, his assent to his own legacy is

Assent of executor to his necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee, and is not referable to his character of executor.

Implied assent.

Illustration.

An executor takes the rent of a house or the interest of Government-securities bequeathed to him, and applies it to his own use. This is assent.

116. The assent of the executor to a legacy gives effect to it from the death of the testator.

Effect of executor's assent.

Illustrations.

(a.) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b.) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

Executor when to deliver legacies.

117. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

118. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

119. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

When annuity, to be paid quarterly or monthly, first falls due.

1881.

Act 5.

120. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made ;

Date of successive payments when first payment directed to be made within given time, or on day certain.

Apportionment where annuitant dies between times of payment.

and if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall, at the end of the year, be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of sum bequeathed where legacy, not specific, given for life.

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Investment of general legacy, to be paid at future time.

Intermediate interest.

The intermediate interest shall form part of the residue of the testator's estate.

123. Where an annuity is given, and no fund is charged with its payment or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased ; or

Procedure when no fund charged with, or appropriated to, annuity.

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

Transfer to residuary legatee of contingent bequest.

125. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Investment of residue bequeathed for life, with direction to invest in specified securities.

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner, as the executor in his discretion thinks fit ;

Time and manner of conversion and investment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive,

Interest payable until investment.

interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested. 1881.
Act 5.

127. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

Judge by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government-securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

Legatee's title to produce of specific legacy.

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(a.) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b.) A bequeaths his Government-securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c.) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

Residuary legatee's title to produce of residuary fund. 129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy.

Such income goes as undisposed of.

1881.

Illustrations.

Act 5.

(a.) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b.) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

Interest when no time fixed for payment of general legacy.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.—(1.) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2.) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3.) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.

The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

Rate of interest.

132. The rate of interest shall be six per cent. per annum.

133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

No interest on arrears of annuity within first year after testator's death.

Interest on sum to be invested to produce annuity.

CHAPTER XII.

OF THE REFUNDING OF LEGACIES.

135. An executor who has paid a legacy under the order of a Judge is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

Refund of legacy paid under Judge's orders.

136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

137. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets, in such case, if further time has, under the second clause of this

Refund when legacy becomes due on performance of condition within further time allowed.

1881.
Act 5.

section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

138. When the executor has paid away the assets in legacies, and he is

When each legatee compelled to refund in proportion. afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

139. Where an executor or administrator has given such notices as the

Distribution of assets. High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution ;

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

140. A creditor who has not received payment of his debt may call

Creditor may call upon legatee to refund. upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

141. If the assets were sufficient to satisfy all the legacies at the time

When legatee, not satisfied or compelled to refund under section 140, cannot oblige one paid in full to refund. of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

142. If the assets were not sufficient to satisfy all the legacies at the

When unsatisfied legatee must first proceed against executor, if solvent. time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent ; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

143. The refunding of one legatee to another shall not exceed the sum

Limit to refunding of one legatee to another. by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

1881.

Act 5.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and, if properly administered, would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

144. The refunding shall in all cases be without interest.

145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Residue after usual payments to be paid to residuary legatee.

of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

146. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Liability of executor or administrator for devastation.

deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(a.) The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(b.) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(c.) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

For neglect to get in any part of property.

by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(a.) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(b.) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

Provisions applied to administrator with will annexed.

148. In Chapters VIII., IX., X., and XII. of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

Saving clause.

149. Nothing herein contained shall—

(a) validate any testamentary disposition which would otherwise have been invalid;

(b) invalidate any such disposition which would otherwise have been valid;

(c) deprive any person of any right of maintenance to which he would otherwise have been entitled; or 1881.

(d) affect the rights, duties, and privileges of the Administrator-General of Bengal, Madras, or Bombay. Act 5.

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindú, Muhammadan, Buddhist, or person exempted under section 332 of the Indian Succession Act, 1865, shall be instituted in any Court in British India except under this Act.

Probate and administration in case of persons exempted from Succession Act, to be granted only under this Act.

151. In Act No. XXVII. of 1860 (*An Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*), sections 15 and 16 and the proviso to section 13 shall be repealed.

Repeal of portions of Act XXVII. of 1860.

152. The grant of probate or letters of administration under this Act in respect of any property shall be deemed to supersede any certificate previously granted in respect of the same property under the said Act No. XXVII. of 1860, or Bombay Regulation No. VIII. of 1827; and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding:

Grant of probate or administration to supersede certificate under Act XXVII. of 1860, or Bombay Regulation VIII. of 1827.

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

153. In the Court-fees Act, 1870, Schedule I., Nos. 11 and 12, in the Amendment of Court-fees Act. third column, after the words "amount or value," the following shall be inserted, namely:—

"Provided that, when after a certificate has been granted as aforesaid in respect of any estate, probate or letters of administration is or are granted in respect of the same estate, the fee payable in respect of such latter grant shall be reduced by the amount of the fee paid in respect of the former grant."

Amendment of Hindú Wills Act.

154. The following amendments shall be made in the Hindú Wills Act, 1870 (namely):—

(a.) For the portion of section two commencing with the words, "sections one hundred and seventy-nine" and ending with the words "administrator with the will annexed," the words "and section one hundred and eighty-seven" shall be substituted.

(b.) The third clause of section three and the last clause of section six shall be repealed.

(c.) In section six, for the words "one hundred and three and one hundred and eighty-two" the words "and one hundred and, three" shall be substituted.

155. All grants of probate of the will or letters of administration to the estate of any deceased Hindú, Muhammadan, or Buddhist, or any person exempted under section 332 of the Indian Succession Act, 1865, which, Validation of grants of probate and administration made in British Burma.

1881. before this Act comes into force, have been made in British Burma, shall,
whenever such grant would have been lawful if this Act had been in force,
Act 5. be deemed to have been made in accordance with law.

156. In the second schedule to the Indian Limitation Act, 1877, No.
Amendment of Act XV. of 43, after the figures "321," the following shall be
1877. inserted, namely—"or under the Probate and Ad-
ministration Act, 1881, section 139 or 140."

INDIAN REGISTRATION ACT, · NO. III. OF 1877.

RECEIVED THE G.-G.'s ASSENT ON THE 14TH FEBRUARY 1877.

An Act for the Registration of Documents.

WHEREAS it is expedient to amend the law relating to the registration of documents; It is hereby enacted as follows:—
Preamble.

PART I.—PRELIMINARY.

Short title.

1. This Act may be called "The Indian Registration Act, 1877."

Local extent.

It extends to the whole of British India, except such districts or tracts of country as the Local Government may from time to time, with the previous sanction of the Governor-General in Council, exclude from its operation.

Commencement.

And it shall come into force on the first day of April 1877.

Repeal of enactments.

2. On and from that day Act No. VIII. of 1871 shall be repealed.

But all appointments, notifications, rules, and orders made, and all districts and sub-districts formed, and all offices established, and all tables of fees prepared, under such Act or any of the enactments thereby repealed, shall be deemed to have been respectively made, formed, established, and prepared under this Act, except in so far as such rules and orders may be inconsistent herewith.

Reference made in Acts passed before the first day of April 1877 to the said Act, or to any enactment thereby repealed, shall be read as if made to the corresponding section of this Act.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context—

"Lease" includes a counterpart, kabūliyat, an undertaking to cultivate or occupy, and an agreement to lease:

"Signature" and "signed" include and apply to the affixing of a mark:

"Immoveable property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries, or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops, nor grass:

"Moveable property" includes standing timber, growing crops, and grass, fruit upon and juice in trees, and property of every other description, except immoveable property:

"Book" includes a portion of a book, and also any number of sheets connected together with a view of forming a book or portion of a book:

"Endorsement" and "endorsed" include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act:

"Minor" means a person who, according to the personal law to which he is subject, has not attained majority:

1877: "Representative" includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot:

Act 3. "Addition" means the place of residence, and the profession, trade, rank, and title (if any) of a person described, and in the case of a native, his caste (if any) and his father's name, or, where he is usually described as the son of his mother, then his mother's name:

"District Court" includes the High Court in its ordinary original civil jurisdiction; and

"District" and "sub-district" respectively mean a district and sub-district formed under this Act.

PART II.—OF THE REGISTRATION-ESTABLISHMENT.

4. The Local Government shall appoint an officer to be the Inspector-Inspector-General of Registration for the territories subject to such Government,

or may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector-General shall be exercised and performed by such officer or officers, and within such local limits, as the Local Government from time to time appoints in this behalf.

The Governor of Bombay in Council may also, with the previous consent of the Governor-General in Council, appoint an officer to be Branch Inspector-General of Sindh, who shall have all the powers of an Inspector-General under this Act other than the power to frame rules hereinafter conferred.

Any Inspector-General or the Branch Inspector-General of Sindh may hold simultaneously any other office under Government.

5. For the purposes of this Act, the Local Government shall form districts and sub-districts, and shall prescribe, and may from time to time alter, the limits of such districts and sub-districts.

The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the local official gazette.

Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

6. The Local Government may appoint such persons, whether public officers or not, as it thinks proper, to be registrars of the several districts, and to be sub-registrars of the several sub-districts, formed as aforesaid, respectively.

7. The Local Government shall establish in every district an office to be styled the office of the registrar, and in every sub-district an office or offices to be styled the office of the sub-registrar, or the offices of the joint sub-registrars, and may amalgamate with any office of a registrar any office of a sub-registrar subordinate to such registrar,

and may authorize any sub-registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the registrar to whom he is subordinate:

Provided that no such authorization shall enable a sub-registrar to hear an appeal against an order passed by himself under this Act.

1877.
Act 3.

8. The Local Government may also appoint officers to be called inspectors of registration-offices, and may from time to time prescribe the duties of such officers. Every such inspector shall be subordinate to the Inspector-General.

9. Every military cantonment where there is a Cantonment Magistrate may (if the Local Government so directs) be, for the purposes of this Act, a sub-district or a district, and such Magistrate shall be the sub-registrar or the registrar of such sub-district or district, as the case may be.

Whenever the Governor-General in Council declares any military cantonment beyond the limits of British India to be a sub-district or a district for the purposes of this Act, he shall also declare, in the case of a sub-district, what authorities shall be registrar of the district and Inspector-General, and, in the case of a district, what authority shall be Inspector-General with reference to such cantonment and the sub-registrar or registrar thereof.

10. Whenever any registrar other than the registrar of a district, including a presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant,

any person whom the Inspector-General appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the registrar's office is situate,

shall be the registrar during such absence, or until the Local Government fills up the vacancy.

Whenever the registrar of a district, including a presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant,

any person whom the Inspector-General appoints in this behalf shall be the registrar during such absence, or until the Local Government fills up the vacancy.

11. Whenever any registrar is absent from his office on duty in his district, he may appoint any sub-registrar or other person in his district to perform, during such absence, all the duties of a registrar, except those mentioned in sections 68 and 72.

12. Whenever any sub-registrar is absent, or when his office is temporarily vacant, any person whom the registrar of the district appoints in this behalf shall be sub-registrar during such absence, or until the Local Government fills up the vacancy.

13. All appointments made under section 10, section 11, or section 12, shall be reported to the Local Government by the Inspector-General. Such report shall be either special or general as the Local Government directs.

The Local Government may suspend, remove, or dismiss any person appointed under the provisions of this Act, and appoint another person in his stead.

14. Subject to the approval of the Governor-General in Council, the Local Government may assign such salaries as such Government from time to time deems proper to the registering officers appointed under this Act, or provide for their remuneration by fees, or partly by fees and partly by salaries.

1877.
Act 3.

The Local Government may allow proper establishments for the several offices under this Act.

15. The several registrars and sub-registrars shall use a seal bearing the following inscription in English and in such other language as the Local Government directs :—
Seals of registering officers.
“ The seal of the registrar (or of the sub-registrar) of . . . ”

16. The Local Government shall provide for the office of every registering officer the books necessary for the purposes of this Act.
Register-books.

The books so provided shall contain the forms from time to time prescribed by the Inspector-General with the sanction of the Local Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.
Forms.

The Local Government shall supply the office of every registrar with a fire-proof box, and shall, in each district, make suitable provision for the safe custody of the records connected with the registration of documents in such district.
Fire-proof boxes.

PART III.—OF REGISTRABLE DOCUMENTS.

17. The documents next hereinafter mentioned shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which Act No. XVI. of 1864, or Act No. XX. of 1866, or Act No. VIII. of 1871, or this Act, came or comes into force (that is to say),—
Documents of which registration is compulsory.

(a) instruments of gift of immoveable property :

(b) other non testamentary instruments which purport or operate to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title, or interest, whether vested or contingent, of the value of one hundred rupees, and upwards, to or in immoveable property :

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title, or interest : and

(d) leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent :

Provided that the Local Government may, by order published in the official gazette, exempt from the operation of the former part of this section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years, and the annual rents reserved by which do not exceed fifty rupees.

Exception of

Nothing in clauses b and c of this section applies to

composition-deeds ;

(e) any composition-deed ;

and of transfers of shares and debentures in land companies ;

(f) any instrument relating to shares in a joint-stock company, notwithstanding that the assets of such company consist in whole or in part of immoveable property ; or

(g) any debenture issued by any such company, and not creating, declaring, assigning, limiting, or extinguishing any right, title, or interest to or in immoveable property, except in so far as it entitles the holder to the

security afforded by a registered instrument, whereby the company has mortgaged, conveyed, or otherwise transferred the whole or part of its immoveable property, or any interest therein, to trustees upon trust for the benefit of the holders of such debentures ; or*

(g) any endorsement upon or transfer of any debenture issued by any such company ;

(h) any document not itself creating, declaring, assigning, limiting, or extinguishing any right, title, or interest of the value of one hundred rupees and upwards to or in immoveable property, but merely creating a right to obtain another document, which will, when executed, create, declare, assign, limit, or extinguish any such right, title, or interest ;

(i) decrees and orders of Courts and awards ;

(j) grants of immoveable property by Government ;

(k) instruments of partition made by revenue-officers ;

(l) certificates and instruments of collateral security granted under the Land Improvement Act, 1871 ;†

(m) orders granting loans under the Agriculturists' Loans Act, 1884, and instruments for securing the repayment of loans made under that Act ;‡

(n) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage.§

Authorities to adopt a son, executed after the first day of January 1872, and not conferred by a will, shall also be registered.

Documents of which registration is optional.

18. Any of the documents next hereinafter mentioned may be registered under this Act (that is to say),—

(a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title, or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immoveable property ;

(b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title, or interest ;

(c) leases of immoveable property for any term not exceeding one year, and leases exempted under section 17 ;

(d) instruments (other than wills) which purport or operate to create, declare, assign, limit, or extinguish any right, title, or interest to or in moveable property ;

(e) wills ;

(f) all other documents not required by section 17 to be registered.

19. If any document duly presented for registration be in a language

Documents in language not understood by registering officer. which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it

be accompanied by a true translation into a language commonly used in the district, and also by a true copy.

* New clause, inserted by Act VII. of 1856, s. 2.

† In this clause, for the word "certificates" the words "orders granting loans" shall be substituted in those parts of British India in which the Land Improvement Loans Act (XIX. of 1883) is in force. See s. 12, Act XIX. of 1883.

‡ New clause, added by Act VII. of 1886, s. 3.

§ New clause, added by Act VII. of 1886, s. 4.

1877.

Act 3.

20. The registering officer may, in his discretion, refuse to accept for registration any document in which any interlineation, blank, erasure, or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure, or alteration. If he register such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure, or alteration.

21. (a.) No non-testamentary document relating to immoveable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(b.) Houses in town shall be described as situate on the north or other side of the street or road (mentioning it) to which they front, and by their existing and former occupancies, and by their numbers, if the houses in such street or road are numbered. Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(c.) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it be accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

22. Failure to comply with the provisions contained in section 21, clause b, shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify such property.

PART IV.—OF THE TIME OF PRESENTATION.

23. Subject to the provisions contained in sections 24, 25, 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution,

or, in the case of a copy of a decree or order, within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final:

Provided that, where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

24. If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in British India, is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.

Any application for such direction may be lodged with a sub-registrar, who shall forthwith forward it to the registrar to whom he is subordinate.

1877.
Act 3.

25. When a document purporting to have been executed by all or any of the parties out of British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied,
(a) that the instrument was so executed, and
(b) that it has been presented for registration within four months after its arrival in British India,
may, on payment of the proper registration-fee, accept such document for registration.

26. Whenever a registration-office is closed on the last day of any period provided in this Act for the presentation of any document, such last day shall, for the purposes of this Act, be deemed to be the day on which the office re-opens.

Provision where office is closed on last day of period for presentation.
Wills may be presented or deposited at any time.

27. A will may at any time be presented for registration or deposited in manner hereinafter provided.

PART V.—OF THE PLACE OF REGISTRATION.

28. Save as in this part otherwise provided, every document mentioned in section 17, clauses *a*, *b*, *c*, and *d*, and section 18, clauses *a*, *b*, and *c*, shall be presented for registration in the office of a sub-registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

29. Every document other than a document referred to in section 28, and a copy of a decree or order, may be presented for registration either in the office of the sub-registrar in whose sub-district the document was executed, or in the office of any other sub-registrar under the Local Government at which all the persons executing and claiming under the document desire the same to be registered.

A copy of a decree or order may be presented for registration in the office of the sub-registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immoveable property, in the office of any other sub-registrar under the Local Government at which all the persons claiming under the decree or order desire the copy to be registered.

30. (a.) Any registrar may, in his discretion, receive and register any document which might be registered by any sub-registrar subordinate to him.

(b.) The registrar of a district including a presidency-town and the registrar of the Lahore district may receive and register any document referred to in section 28 without regard to the situation in any part of British India of the property to which the document relates.

31. In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorized to accept the same for registration or deposit.

But such officer may, on special cause being shown, attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will.

1877.

PART VI.—OF PRESENTING DOCUMENTS FOR REGISTRATION.

Act 3.

32. Except in the cases mentioned in section 31 and section 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration-office by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or by the representative or assign of such person, or by the agent of such person, representative, or assign, duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned.

Powers-of-attorney recognizable for purposes of section 32.

33. For the purpose of section 32, the powers-of-attorney next hereinafter mentioned shall alone be recognized (that is to say),—

(a) if the principal at the time of executing the power-of-attorney resides in any part of British India in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the registrar or sub-registrar within whose district or sub-district the principal resides :

(b) if the principal at the time aforesaid resides in any other part of British India, a power-of-attorney executed before and authenticated by any Magistrate :

(c) if the principal at the time aforesaid does not reside in British India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, British Consul, or Vice-Consul, or representative of Her Majesty or of the Government of India :

Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses a and b of this section :—

persons who, by reason of bodily infirmity, are unable, without risk of serious inconvenience, so to attend ;

persons who are in jail under civil or criminal process ; and

persons exempt by law from personal appearance in Court.

In every such case the registrar or sub-registrar or magistrate (as the case may be), if satisfied that the power of attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.

To obtain evidence as to the voluntary nature of the execution, the registrar or sub-registrar or magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

Any power-of-attorney mentioned in this section may be proved by the production of it without further proof, when it purports, on the face of it, to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf.

34. Subject to the provisions contained in this part and in sections 41, 43, 45, 69, 75, 77, 88, and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns, or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25, and 26 :

Provided that if, owing to urgent necessity or unavoidable accident, all such persons do not so appear, the registrar, in cases where the delay in appearing does not exceed four months, may direct that, on payment of a fine, not exceeding ten times the amount of the proper registration-fee, in addition to the fine, if any, payable under section 24, the document may be registered.

1877.
Act 3.

Such appearance may be simultaneous or at different times.

The registering officer shall thereupon—

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed,

(b) satisfy himself as to the identity of the persons appearing before him, and alleging that they have executed the document, and

(c) in the case of any person appearing as a representative, assign, or agent, satisfy himself of the right of such person so to appear.

Any application for a direction under the proviso in this section may be lodged with a sub-registrar, who shall forthwith forward it to the registrar to whom he is subordinate.

Nothing in this section applies to copies of decrees or orders.

35. If all the persons executing the document appear personally before

the registering officer, and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document ;

or, in the case of any person appearing by a representative, assign, or agent, if such representative, assign, or agent, admits the execution ;

or, if the person executing the document is dead, and his representative or assign appears before the registering officer, and admits the execution,

the registering officer shall register the document as directed in sections 58 to 61, inclusive.

The registering officer may, in order to satisfy himself that the persons

appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examining any one present in his office. If any of the persons by whom the document purports to be executed deny its execution, or

if any such person appears to the registering officer* to be a minor, an idiot, or a lunatic, or

if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document as to the person so denying, appearing, or dead :† Provided that, where such officer is a registrar, he shall follow the procedure prescribed in Part XII. of this Act.

PART VII.—OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES.

36. If any person presenting any document for registration, or claiming

under any document which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the

* The words, " to the registering officer," have been added by Act XII of 1879, n. 104.

† The words, " as to the person so denying, appearing, or dead," have been added by the same Act and section.

1877. registration of such document, the registering officer may, in his discretion, call upon such officer or Court as the Local Government from time to time directs in this behalf to issue a summons requiring him to appear at the registration-office, either in person or by duly authorized agent as in the summons may be mentioned, and at a time named therein.

Act 3.

37. The officer or Court, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required.

Officer or Court to issue and cause service of summons.

38. A person who, by reason of bodily infirmity, is unable, without risk or serious inconvenience, to appear at the registration-office,

Persons exempt from appearance at registration-office. a person in jail under civil or criminal process, and persons exempt by law from personal appearance in Court, and who would, but for the provision next hereinafter contained, be required to appear in person at the registration-office, shall not be required so to appear.

In every such case, the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

39. The law in force for the time being as to summonses, commissions, and compelling the attendance of witnesses, and for their remuneration in suits before Civil Courts, shall, save as aforesaid, and *mutatis mutandis*, apply to any summons or commission issued, and any person summoned to appear under the provisions of this Act.

PART VIII.—OF PRESENTING WILLS AND AUTHORITIES TO ADOPT.

40. The testator, or after his death any person claiming as executor or otherwise under a will, may present it to any registrar or sub-registrar for registration, and the donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any registrar or sub-registrar for registration.

41. A will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document.

A will or authority to adopt, presented for registration by any other person entitled to present it, shall be registered if the registering officer is satisfied—

(a) that the will or authority was executed by the testator or donor, as the case may be ;

(b) that the testator or donor is dead ; and

(c) that the person presenting the will or authority is, under section 40, entitled to present the same.

PART IX.—OF THE DEPOSIT OF WILLS.

42. Any testator may, either personally or by duly authorized agent, deposit with any registrar his will in a sealed cover, superscribed with the name of the testator and that of his agent (if any), and with a statement of the nature of the document.

Deposit of wills.

43. On receiving such cover, the registrar, if satisfied that the person presenting the same for deposit is the testator or his agent, shall transcribe in his Register-book No. 5 the superscription aforesaid, and shall note in the same book and on the said cover the year, month, day, and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover.

The registrar shall then place and retain the sealed cover in his fire-proof box.

44. If the testator who has deposited such cover wishes to withdraw it, he may apply either personally or by duly authorized agent to the registrar who holds it in deposit, and such registrar, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly.

45. If, on the death of a testator who has deposited a sealed cover under section 42, application be made to the registrar who holds it in deposit to open the same, and if the registrar is satisfied that the testator is dead, he shall, in the applicant's presence, open the cover, and, at the applicant's expense, cause the contents thereof to be copied into his Book No. 3.

When such copy has been made, the registrar shall re-deposit the original will.

46. Nothing hereinbefore contained shall affect the provisions of the Indian Succession Act, section 259, or the power of any Court by order to compel the production of any will. But whenever any such order is made, the registrar shall, unless the will has been already copied under section 45, open the cover, and cause the will to be copied into his Book No. 3, and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid.

PART X.—OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION.

47. A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

48. All non-testamentary documents duly registered under this Act, and relating to any property, whether moveable or immoveable, shall take effect against any oral agreement or declaration relating to such property, unless where an agreement or declaration has been accompanied or followed by delivery of possession.

49. No document required by section 17 to be registered

shall affect any immoveable property comprised therein, or confer any power to adopt, or be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered in accordance with the provisions of this Act.

1877.

Act 3.

Registered documents relating to land, of which registration is optional, to take effect against unregistered documents.

50. Every document of the kinds mentioned in clauses *a*, *b*, *c*, and *d* of section 17, and clauses *a* and *b* of section 18, shall, if duly registered, take effect, as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

Nothing in the former part of this section applies to leases exempted under the proviso in section 17, or to the documents mentioned in clauses *e*, *f*, *ff*, *g*, *h*, *i*, *j*, *k*, *l*, *m*, and *n* of the same section.*

Explanation—In cases where Act No. XVI. of 1864 or Act No. XX. of 1866 was in force in the place and at the time in and at which such unregistered document was executed, “unregistered” means not registered according to such Act, and where the document is executed after the first day of July 1871, not registered under Act No. VIII. of 1871 or this Act.

PART XI.—OF THE DUTIES AND POWERS OF REGISTERING OFFICERS :

(A) *As to the Register-books and Indexes.*

Register-books to be kept in the several offices.

51. The following books shall be kept in the several offices hereinafter named (that is to say)—

In all registration-offices—

Book 1, “Register of non-testamentary documents relating to immoveable property ;”

Book 2, “Record of reasons for refusal to register ;”

Book 3, “Register of wills and authorities to adopt ;” and

Book 4, “Miscellaneous register.”

In the offices of registrars—

Book 5, “Register of deposits of wills.”

In Book 1 shall be entered or filed all documents or memoranda registered under sections 17, 18, and 89,† which relate to immoveable property, and are not wills.

In Book 4 shall be entered all documents registered under clauses *d* and *f* of section 18, which do not relate to immoveable property.

Nothing in the former part of this section shall be deemed to require more than one set of books where the office of the registrar has been amalgamated with the office of a sub-registrar.

52. The day, hour, and place of presentation, and the signature of every

Endorsements on documents presented.

of presenting it : a receipt

Receipt for document.

every document admitted to registration shall, without unnecessary delay,

Documents admitted to registration to be copied.

And all such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector-General.

person presenting a document for registration, shall be endorsed on every such document at the time of presenting it : a receipt for such document shall be given by the registering officer to the person presenting the same ; and, subject to the provisions contained in section 62, every document admitted to registration shall, without unnecessary delay, be copied in the book appropriated therefor according to the order of its admission.

* As amended by Act VII. of 1886, s. 5.

† The figures 89 have been substituted for 87 by Act XII. of 1879, s. 105.

1877.
Act 3.

53. All entires in each book shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

54. In every office in which any of the books hereinbefore mentioned are kept, there shall be prepared current indexes of the contents of such books; and every entry in such indexes shall be made, so far as practicable, immediately after the registering officer has copied, or filed a memorandum of, the document to which it relates.

55. Four such indexes shall be made in all registration-offices, and shall be named, respectively, Index No. I., Index No. II., Index No. III., and Index No. IV.

Index No. I. shall contain the names and additions of all persons executing and of all persons claiming under every document entered or memorandum filed in Book No. 1.

Index No. II. shall contain such particulars mentioned in section 21 relating to every such document and memorandum as the Inspector-General from time to time directs in that behalf.

Index No. III. shall contain the names and additions of all persons executing every will and authority entered in Book No. 3, and of the executors and persons respectively appointed thereunder, and, after the death of the testator or the donor (but not before), the names and additions of all persons claiming under the same.

Index No. IV. shall contain the names and additions of all persons executing and of all persons claiming under every document entered in Book No. 4.

Indexes Nos. I., II., III., and IV., shall contain such other particulars, and shall be prepared in such form, as the Inspector-General from time to time directs.

56. Every sub-registrar shall send to the registrar to whom he is subordinate, at such intervals as the Inspector-General from time to time directs, a copy of all entries made by such sub-registrar, during the last of such intervals, in Indexes Nos. I., II., and III.

Such copy to be filed by registrar. Every registrar receiving such copy shall file it in his office.

57. Subject to the previous payment of the fees payable in that behalf, the Books Nos. 1 and 2, and the indexes relating to Book No. 1, shall be at all times open to inspection by any person applying to inspect the same; and, subject to the provisions of section 62, copies of entries in such books shall be given to all persons applying for such copies.

Subject to the same provisions, copies of entries in Book No. 3, and in the index relating thereto, shall be given to the persons executing the documents to which such entries relate, or to their agents, and, after the death of the executants (but not before), to any person applying for such copies.

Subject to the same provisions, copies of entries in Book No. 4, and in the index relating thereto, shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative. The requisite search under this section for entries in Books Nos. 3 and 4 shall be made only by the registering officer.

1877.
Act 3.

All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

(B) As to the Procedure on admitting to Registration.

58. On every document admitted to registration, other than a copy of a

Particulars to be endorsed
on documents admitted to re-
gistration.

decree or order, or a copy sent to a registering officer under section 89,* there shall be endorsed from time to time the following particulars (that

is to say),—

(a) the signature and addition of every person admitting the execution of the document; and, if such execution has been admitted by the representative, assign, or agent of any person, the signature and addition of such representative, assign, or agent;

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence, in reference to such execution.

If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall, at the same time, endorse a note of such refusal.

59. The registering officer shall affix the date and his signature to all en-

Such endorsements to be
dated and signed by register-
ing officer.

dorsements made under sections 52 and 58, relating to the same document, and made in his presence on the same day.

60. After such of the provisions of sections 34, 35, 58, and 59 as apply

Certificate showing that
document has been registered,
and number and page of book
in which it has been copied.

to any document presented for registration, have been complied with, the registering officer shall endorse thereon a certificate containing the word "re-

gistered," together with the number and page of the book in which the document has been copied.

Such certificate shall be signed, sealed, and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned.

61. The endorsements and certificate referred to and mentioned in sec-

Endorsements and certi-
ficate to be copied.

tions 59 and 60 shall thereupon be copied into the margin of the register-book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in Book No. 1.

The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section 52.

62. When a document is presented for registration under section 19, the

Procedure on presenting
documents in language un-
known to registering officer.

translation shall be transcribed in the register of documents of the nature of the original, and, together with the copy referred to in section 19, shall be filed in the registration-office.

* As amended by Acts XIX. of 1883 and VII. of 1886.

The endorsements and certificate respectively mentioned in sections 59 and 60 shall be made on the original, and for the purpose of making the copies and memoranda required by sections 57, 64, 65, and 66, the translation shall be treated as if it were the original. 1877.
Act 3.

63. Every registering officer may, at his discretion, administer an oath to any person examined by him under the provisions of this Act.

He may also, at his discretion, record a note of the substance of the statement made by each such person, and such statement shall be read over, or (if made in a language with which such person is not acquainted) interpreted to him in a language with which he is acquainted, and, if he admits the correctness of such note, it shall be signed by the registering officer.

Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

(C) *Special Duties of Sub-Registrar.*

64. Every sub-registrar, on registering a non-testamentary document relating to immoveable property not wholly situate in his own sub-district, shall make a memorandum thereof and of the endorsement and certificate (if any) thereon, and send the same to every other sub-registrar subordinate to the same registrar as himself in whose sub-district any part of such property is situate, and such sub-registrar shall file the memorandum in his Book No. 1.

65. Every sub-registrar, on registering a non-testamentary document relating to immoveable property situate in more districts than one, shall also forward a copy thereof and of the endorsement and certificate (if any) thereon, together with a copy of the map or plan (if any) mentioned in section 21, to the registrar of every district in which any part of such property is situate other than the district in which his own sub-district is situate.

The registrar, on receiving the same, shall file in his Book No. 1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to each of the sub-registrars subordinate to him within whose sub-district any part of such property is situate; and every sub-registrar receiving such memorandum shall file it in his Book No. 1.

(D.) *Special Duties of Registrar.*

66. On registering any non-testamentary document relating to immoveable property, the registrar shall forward a memorandum of such document to each sub-registrar subordinate to himself in whose sub-district any part of the property is situate.

He shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in section 21, to every other registrar in whose district any part of such property is situate.

Such registrar, on receiving any such copy, shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the sub-registrars subordinate to him within whose sub-district any part of the property is situate.

Every sub-registrar receiving any memorandum under this section shall file it in his Book No. 1.

67. On any document being registered under section 30, clause b, a copy of such document and of the endorsements and certificate thereon shall be forwarded to every registrar within whose district any part of the property to which the instrument relates is situate, and the registrar receiving such copy shall follow the procedure prescribed for him in the first clause of section 66.

(E) Of the Controlling Powers of Registrars and Inspectors-General.

68. Every sub-registrar shall perform the duties of his office under the Registrar to superintend superintendence and control of the registrar in and control sub-registrars. whose district the office of such sub-registrar is situate.

Every registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any sub-registrar subordinate to him, or in respect of the rectification of any error regarding the book or the office in which any document shall have been registered.

69. The Inspector-General shall exercise a general superintendence over all the registration-offices in the territories under the Local Government, and shall have power from time to time to make rules consistent with this Act—

Inspector-General to super- intend registration-offices. His power to make rules. providing for the safe custody of books, papers, and documents, and also for the destruction of such books, papers, and documents as need no longer be kept ;

declaring what languages shall be deemed to be commonly used in each district ;

declaring what territorial division shall be recognized under section 21 ;

regulating the amount of fines imposed under sections 24 and 34, respectively ;

regulating the exercise of the discretion reposed in the registering officer by section 63 ;

regulating the form in which registering officers are to make memoranda of documents ;

regulating the authentication by registrars and sub-registrars of the books kept in their respective offices under section 51 ;

declaring the particulars to be contained in Indexes Nos. I., II., III., and IV., respectively ;

declaring the holidays that shall be observed in the registration-offices ;

and, generally, regulating the proceedings of the registrars and sub-registrars.

The rules so made shall be submitted to the Local Government for approval, and after they have been approved, they shall be published in the official gazette, and shall then have the same force as if they were inserted in this Act.

70. The Inspector-General may also, in the exercise of his discretion, remit, wholly or in part, the difference between any fine levied under section 24 or section 34, and the amount of the proper registration-fee.

PART XII.—OF REFUSAL TO REGISTER.

1877.

Reasons for refusal to register to be recorded.

71. Every sub-registrar refusing to register a document, Act 3.

except on the ground that the property to which it relates is not situate within his sub-district,

shall make an order of refusal, and record his reasons for such order in his Book No. 2, and endorse the words "registration refused" on the document; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

No registering officer shall accept for registration a document so endorsed, unless and until, under the provisions hereinafter contained, the document is directed to be registered.

72. Except where the refusal is made on the ground of denial of execution,

Power to reverse or alter orders of sub-registrar refusing registration on ground other than denial of execution.

an appeal shall lie against an order of a sub-registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the registrar to whom

such sub-registrar is subordinate, if presented to such registrar within thirty days from the date of the order; and the registrar may reverse or alter such order:

and if the order of the registrar directs the document to be registered, and the document is duly presented for registration within thirty days after the making of such order, the sub-registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59, and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

Application where sub-registrar refuses to register on ground of denial of execution.

73. When a sub-registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution,

any person claiming under such document, or his representative, assign, or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply to the registrar to whom such sub-registrar is subordinate in order to establish his right to have the document registered.

Such application shall be in writing, and shall be accompanied by a copy of the reasons recorded under section 71; and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints.

74. In such case, and also where such denial as aforesaid is made before

Procedure of registrar on such application. a registrar in respect of a document presented for registration to him, he shall, as soon as conveniently may be, enquire—

(a) whether the document has been executed;

(b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

75. If the registrar finds that the document has been executed, and that

Order to register, and procedure thereon.

the said requirements have been complied with, he shall order the document to be registered.

1877. And if the document be duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59, and 60.

Act 3.

Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

The registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witnesses, and compel them to give evidence as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure.

Refusal by registrar.

76. Every registrar refusing—

(a) to register a document except on the ground that the property to which it relates is not situate within his district, or that the document ought to be registered in the office of a sub-registrar, or

(b) to direct the registration of a document under section 72 or section 75,

shall make an order of refusal, and record the reasons for such order in his Book No. 2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

No appeal lies from any order under this section or section 72.

77. Where the registrar refused to order the document to be registered

Suit in case of refusal. under section 72 or section 76, any person claiming under such document, or his representative,

assign, or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office, if it be duly presented for registration within thirty days after the passing of such decree; and the provisions contained in the second and third paragraphs of section 75 shall, *mutatis mutandis*, apply to all documents so presented, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit.

PART XIII. —OF THE FEES FOR REGISTRATION, SEARCHES, AND COPIES.

78. Subject to the approval of the Governor-General in Council, the

Fees to be fixed by Local Government. Local Government shall prepare a table of fees payable—

• for the registration of documents :
• for searching the registers :
• for making or granting copies of reasons, entries, or documents, before, on, or after registration :

And of extra or additional fees payable—

• for every registration under section 30 :

• for the issue of commissions :

• for filing translations :

• for attending at private residences :

• for the safe custody and return of documents :

and for such other matters as appear to the Local Government necessary to effect the purposes of this Act.

Alteration of fees.

The Local Government may from time to time, subject to the like approval, alter such table. 1877.

79. A table of the fees so payable shall be published in the official gazette, and a copy thereof in English and the vernacular language of the district shall be exposed

Act 3.

Publication of fees.

to public view in every registration-office.

80. All fees for the registration of documents under this Act shall

be payable on the presentation of such documents.
Fees payable on presentation.

PART XIV.—OF PENALTIES.

81. Every registering officer appointed under this Act, and every

Penalty for incorrectly endorsing, copying, translating, or registering documents with intent to injure.

person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating, or registering of any document presented or deposited under its provisions, endorses, copies, translates, or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury, as defined in the Indian Penal Code, to any person, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

82. Whoever commits any of the following offences shall be punishable

with imprisonment for a term which may extend to seven years, or with fine, or with both :
Penalty for certain other offences.

(a) intentionally makes any false statement, whether on oath or not,

and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act ;
Making false statements before registering officer.

(b) intentionally delivers to a registering officer, in any proceeding under

section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan ;
Delivering false copy or translation.

(c) falsely personates another, and in such assumed character presents

any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or inquiry under this Act ;
False personation.

(d) abets within the meaning of the Indian Penal Code anything made punishable by this Act.
Abetment of offences under this Act.

83. A prosecution for any offence under this Act coming to the know-

ledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector-General, the Branch Inspector-General of Sindh, the registrar, or the sub-registrar in whose territories, district, or sub-district, as the case may be, the offence has been committed.
Registering officer may commence prosecution.

Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a "Magistrate of the second class" ;*

Provided that, in imposing penalties under this Act, no such Court or officer shall exceed the limits of jurisdiction prescribed by the law for the time being in force as to such Court or officer.

* The words, "Magistrate of the second class," have been substituted for the words, "Subordinate Magistrate of the first class," by Act XII. of 1879, s. 106.

1877. All fines imposed under this Act may be recovered, if for offences committed outside the limits of the presidency-towns, in the manner prescribed by the Code of Criminal Procedure, and if for offences committed within those limits, in the manner prescribed by any Act regulating the police of such towns for the time being in force.

Act 3.

84. Every registering officer appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

Every person shall be legally bound to furnish information to such registering officer when required by him to do so. And in section 228 of the same Code, the words "judicial proceeding" shall include any proceeding under this Act.

A registrar shall, but a sub-registrar shall not, as such, be deemed a Court within the meaning of sections 435 and 436 of the Code of Criminal Procedure.

PART XV.—MISCELLANEOUS.

85. Documents (other than wills) remaining unclaimed in any registration-office, for a period exceeding two years, may be destroyed.

Registering officer not liable for thing *bond fide* done or refused in his official capacity.

86. No registering officer shall be liable to any suit, claim, or demand by reason of anything in good faith done or refused in his official capacity.

87. Nothing done in good faith pursuant to this Act, or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

88. Notwithstanding anything herein contained, it shall not be necessary for any officer of Government, or for the Administrator-General of Bengal, Madras, or Bombay, or for any Official Trustee or Official Assignee, or for the Sheriff, Receiver, or Registrar of a High Court, to appear in person or by agent at any registration-office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section 58.

But when any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he think fit, refer to any Secretary to Government or to such officer of Government, Administrator-General, Official Trustee, Official Assignee, Sheriff, Receiver, or Registrar, as the case may be, for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument.

89. Every officer granting a certificate* under the Land Improvement Act, 1871, shall send a copy of such certificate* to the registering officer within the local limits of whose jurisdiction the whole or any part of the land to be improved, or of the land to be granted, as collateral security, is situate, and such registering officer shall file the copy† in his Book No. 1.

* In this clause, for the words "a certificate" the words "a loan," and for the words "such certificate" the words "his order," shall be substituted in those parts of British India in which the Land Improvement Act (XIX. of 1883) is in force.—See s. 12, Act XIX. of 1883.

† The word "copy" has been substituted for the word "certificate" by Act XII. of 1879, s. 107.

Every Court granting a certificate under section 316 of the Code of Civil Procedure shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1.*

Every officer granting a loan under the Agriculturists' Loans Act, 1884, shall send a copy of any instrument whereby immoveable property is mortgaged for the purpose of securing the repayment of the loan, and, if any such property is mortgaged for the same purpose in the order granting the loan, a copy also of that order, to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mortgaged is situate, and such registering officer shall file the copy or copies, as the case may be, in his Book No. 1.†

Exemptions from Act.

90. Nothing contained in this Act, or in Act No. VIII. of 1871, or in

Exemption of certain documents executed by or in favour of Government.

any Act thereby repealed, shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps:—

(a.) Documents issued, received, or attested by any officer engaged in making a settlement or revision of settlement of land-revenue, and which form part of the records of such settlement.

(b.) Documents and maps issued, received, or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, and which form part of the record of such survey.

(c.) Documents which, under any law for the time being in force, are filed periodically in any revenue-office by patwaris or other officers charged with the preparation of village-records.

(d.) Sanads, inam title-deeds, and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land.

(e.) Notices given under section 74 or section 76 of the Bombay Land-revenue Code, 1879, of relinquishment of occupancy by occupants, or of alienated land by holders of such land.‡

But all such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.

91. Subject to such rules and the previous payment of such fees as the

Inspection and copies of such documents.

Local Government from time to time prescribes in this behalf, all documents and maps mentioned in section 90, clauses a, b, c, and e, and all registers of the documents mentioned in clause d, shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.§

92. All rules relating to registration heretofore enforced in British

Burmese registration rules confirmed.

Burma shall be deemed to have had the force of law, and no suit or other proceeding shall be maintained against any officer or other person in respect of anything done under any of the said rules.

* This clause has been added by Act XII. of 1879, s. 107.

† New paragraph, added by Act VII. of 1886, s. 3.

‡ New clause, added by Act VII. of 1886, s. 6.

§ As amended by Act VII. of 1886, s. 6.

1877. (e.) A, one of several partners, is employed to purchase goods for the firm. A, unknown to his co-partners, supplies them, at the market-price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. A is a trustee, for his co-partners, within the meaning of this Act, of the profit so made.

Act 1.

(f.) A, the manager of B's indigo-factory, becomes agent for C, a vendor of indigo seed, and receives, without B's assent, commission on the seed purchased from C for the factory. A is a trustee, within the meaning of this Act, for B, of the commission so received.

(g.) A buys certain land with notice that B has already contracted to buy it. A is a trustee, within the meaning of this Act, for B, of the land so bought.

(h.) A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee, within the meaning of this Act, for C, to the extent of that interest.

'settlement' means any instrument (other than a will or codicil as defined by the Indian Succession Act) whereby the destination or devolution of successive interests in

moveable or immoveable property is disposed of or is agreed to be disposed of :

And all words occurring in this Act, which are defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively assigned to them by that Act.

Words defined in Contract Act.

Savings.

4. Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

(a) to give any right to relief in respect of any agreement which is not a contract ;

(b) to deprive any person of any right to relief, other than specific performance, which he may have under any contract ; or

(c) to affect the operation of the Indian Registration Act on documents.

Specific relief how given.

5. Specific relief is given—

(a) by taking possession of certain property and delivering it to a claimant ;

(b) by ordering a party to do the very act which he is under an obligation to do ;

(c) by preventing a party from doing that which he is under an obligation not to do ;

(d) by determining and declaring the rights of parties otherwise than by an award of compensation ; or

(e) by appointing a Receiver.

Preventive relief.

6. Specific relief granted under clause c of section 5 is called preventive relief.

Relief not granted to enforce penal law.

7. Specific relief cannot be granted for the mere purpose of enforcing a penal law.

PART II.—OF SPECIFIC RELIEF.

CHAPTER I.—OF RECOVERING POSSESSION OF PROPERTY.

(a.) *Possession of Immoveable Property.*

8. A person entitled to the possession of specific immoveable property may recover it in the manner prescribed by the Code of Civil Procedure.

Recovery of specific immoveable property.

9. If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit instituted within six months from the date of the dispossession, recover possession thereof, notwithstanding any other title that may be set up in such suit. 1877.
Act 1.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against the Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(b) Possession of Moveable Property.

10. A person entitled to the possession of specific moveable property may recover the same in the manner prescribed by the Code of Civil Procedure.

Explanation 1.—A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled.

Explanation 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

Illustrations.

(a.) A bequeaths land to B for his life, with remainder to C. A dies. B enters on the land, but C, without B's consent, obtains possession of the title-deeds. B may recover them from C.

(b.) A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A, without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed, as A is not entitled to their possession, whatever right he may have to secure their safe custody.

(c.) A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such property therein as entitles him to recover it from B.

(d.) A deposits books and papers for safe custody with B. B loses them, and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right, if any, under section 168 of the Indian Contract Act, 1872.

(e.) A, a warehouse-keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

11. Any person having the possession or control of a particular article of moveable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases:—

(a) when the thing claimed is held by the defendant as the agent or trustee of the claimant;

(b) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed;

(c) when it would be extremely difficult to ascertain the actual damage caused by its loss;

(d) when the possession of the thing claimed has been wrongfully transferred from the claimant.

Illustrations

of clause a.—A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B, without A's authority, pledges the furniture to C, and C, knowing that B had no right to pledge the furniture, advertises it for sale. C may be compelled to deliver the furniture to A, for he holds it as A's trustee.

1877. of clause *b*.—Z has got possession of an idol belonging to A's family, and of which A is the proper custodian. Z may be compelled to deliver the idol to A.
- Act 1. of clause *c*.—A is entitled to a picture by a dead-painter and a pair of rare China vases. B has possession of them. The articles are of too special a character to bear an ascertainable market-value. B may be compelled to deliver them to A.

CHAPTER II.—OF THE SPECIFIC PERFORMANCE OF CONTRACTS.

(a) *Contracts which may be specifically enforced.*

12. Except as otherwise provided in this chapter, the specific performance of any contract may, in the discretion of the Court, be enforced—

- Cases in which specific performance enforceable.
- (a) when the act agreed to be done is in the performance, wholly or partly, of a trust;
 - (b) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done;
 - (c) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief; or
 - (d) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

Explanation.— Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immoveable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer moveable property can be thus relieved.

Illustrations

of clause *a*.—A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B, and B may enforce specific performance of this obligation.*

of clause *b*.—A agrees to buy, and B agrees to sell, a picture by a dead-painter and two rare China vases. A may compel B specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

of clause *c*.—A contracts with B to sell him a house for Rs. 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money.

In consideration of being released from certain obligations imposed on it by its Act of Incorporation, a railway-company contract with Z to make an archway through their railway to connect lands of Z severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct a siding and a wharf as specified in the contract. Z is entitled to have this contract specifically enforced, for his interest in its performance cannot be adequately compensated for by money; and the Court may appoint a proper person to superintend the construction of the archway, road, siding, and wharf.

A contracts to sell, and B contracts to buy, a certain number of railway-shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

* The first illustration is repealed by Act II. of 1882 (The Indian Trusts Act) as to the territories respectively administered by the Governor of Madras in Council, the Lieutenant-Governors of the North-Western Provinces and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces, Coorg, and Assam. The said illustration will, when the said Act II. of 1882 is extended to other territories, be repealed in such territories.

A contracts with B to paint a picture for B, who agrees to pay therefor Rs. 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the Rs. 1,000.

of clause *d*.—A transfers without endorsement, but for valuable consideration, a promissory note to B. A becomes insolvent, and C is appointed his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities, and a decree for pecuniary compensation for not endorsing the note would be fruitless.

13. Notwithstanding anything contained in section 56 of the Indian Contract Act, a contract is not wholly impossible of performance because a portion of its subject-matter, existing at its date, has ceased to exist at the time of the performance.

Contracts of which the subject has partially ceased to exist.

Illustrations.

(a.) A contracts to sell a house to B for a lākh of rupees. The day after the contract is made, the house is destroyed by a cyclone. B may be compelled to perform his part of the contract by paying the purchase-money.

(b.) In consideration of a sum of money payable by B, A contracts to grant an annuity to B for B's life. The day after the contract has been made, B is thrown from his horse and killed. B's representative may be compelled to pay the purchase-money.

14. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

Specific performance of part of contract where part unperformed is small.

Illustrations.

(a.) A contracts to sell to B a piece of land consisting of 100 bighās. It turns out that 98 bighās of the land belong to A, and the two remaining bighās to a stranger, who refuses to part with them. The two bighās are not necessary for the use or enjoyment of the 98 bighās, nor so important for such use or enjoyment that the loss of them may not be made good in money. A may be directed at the suit of B to convey to B the 98 bighās, and to make compensation to him for not conveying the two remaining bighās; or B may be directed, at the suit of A, to pay to A, on receiving the conveyance and possession of the land, the stipulated purchase-money, less a sum awarded as compensation for the deficiency.

(b.) In a contract for the sale and purchase of a house and lands for two lākhs of rupees, it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit and include it in the decree for specific performance, or may confine its decree to the house.

15. Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all right to compensation, either for the deficiency, or for the loss or damage sustained by him through the default of the defendant.

Specific performance of part of contract where part unperformed is large.

Illustrations.

(a.) A contracts to sell to B a piece of land consisting of 100 bighás. It turns out that 50 bighás of the land belong to A, and the other 50 bighás to a stranger, who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the 50 bighás which belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bighás to him on payment of the purchase-money.

(b.) A contracts to sell to B an estate with a house and garden for a lách of rupees. The garden is important for the enjoyment of the house. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all rights to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey the house to him on payment of the purchase-money.

16. When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

Specific performance of independent part of contract.

17. The Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections.

18. Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this chapter) has the following rights:—

(a) if the vendor or lessor has, subsequently to the sale or lease, acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(b) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence;

(c) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage, and to obtain a conveyance from the mortgagee;

(d) where the vendor or lessor sues for specific performance of the contract, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to his costs of the suit, and to a lien for such deposit, interest, and costs on the interest of the vendor or lessor in the property agreed to be sold or let.

19. Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

Power to award compensation in certain cases.

If in any such suit the Court decides that specific performance ought not to be granted, but there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and

that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly. 1877.

Compensation awarded under this section may be assessed in such manner as the Court may direct. Act 1.

Explanation.—The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

Illustrations

of the second paragraph :—A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the contract or to pay compensation. The Court is of opinion that A has made a valid contract, and broken it, without excuse, to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

of the third paragraph :—A contracts with B to sell him a house for Rs. 1,000, the price to be paid and the possession given on the 1st January 1877. A fails to perform his part of the contract, and B brings his suit for specific performance and compensation, which is decided in his favour on the 1st January 1878. The decree may, besides ordering specific performance, award to B compensation for any loss which he has sustained by A's refusal.

of the explanation :—A, a purchaser, sues B, his vendor, for specific performance of a contract for the sale of a patent. Before the hearing of the suit, the patent expires. The Court may award A compensation for the non-performance of the contract, and may, if necessary, amend the plaint for that purpose.

A sues for the specific performance of a resolution passed by the directors of a public company, under which he was entitled to have a certain number of shares allotted to him, and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation for the non-performance.

20. A contract, otherwise proper to be specifically enforced, may be

Liquidation of damages not thus enforced, though a sum be named in it as the
a bar to specific performance. amount to be paid in case of its breach, and the
party in default is willing to pay the same.

Illustration.

A contracts to grant B an underlease of property held by A under C, and that he will apply to C for a license necessary to the validity of the underlease, and that, if the license is not procured, A will pay B Rs. 10,000. A refuses to apply for the license, and offers to pay B the Rs. 10,000. B is nevertheless entitled to have the contract specifically enforced if C consents to give the license.

(b) *Contracts which cannot be specifically enforced.*

Contracts not specifically enforceable. 21. The following contracts cannot be specifically enforced :—

- (a) a contract for the non-performance of which compensation in money is an adequate relief ;
- (b) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms ;
- (c) a contract the terms of which the Court cannot find with reasonable certainty ;
- (d) a contract which is in its nature revocable ;
- (e) a contract made by trustees either in excess of their powers or in breach of their trust ;
- (f) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers ;

- 1877.** (g) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date ;
Act 1. (h) a contract of which a material part of the subject-matter, supposed by both parties to exist, has, before it has been made, ceased to exist.

And, save as, provided by the Code of Civil Procedure, no contract to refer a controversy to arbitration shall be specifically enforced ; but if any person who has made such a contract, and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

Illustrations

to a.—A contracts to sell, and B contracts to buy, a lách of rupees in the four per cent. loan of the Government of India :

A contracts to sell, and B contracts to buy, 40 chests of Indigo at Rs. 1,000 per chest :

In consideration of certain property having been transferred by A to B, B contracts to open a credit in A's favour to the extent of Rs. 10,000, and to honor A's drafts to that amount ;

The above contracts cannot be specifically enforced, for in the first and the second both A and B, and in the third A, would be reimbursed by compensation in money.

to b.—A contracts to render personal service to B :

A contracts to employ B on personal service ;

A, an author, contracts with B, a publisher, to complete a literary work.

B cannot enforce specific performance of these contracts.

A contracts to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A, and the other by B. A and B each names a valuer, but before the valuation is made, A instructs his valuer not to proceed :

By a charter-party entered into in Calcutta between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Rangoon, and two-thirds on delivery of the cargo in London :

A lets land to B, and B contracts to cultivate it in a particular manner for three years next after the date of the lease :

A and B contract that, in consideration of annual advances to be made by A, B will, for three years next after the date of the contract, grow particular crops on the land in his possession, and deliver them to A when cut and ready for delivery :

A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B, he will paint a picture for B :

A contracts with B to execute certain works which the Court cannot superintend ;

A contracts to supply B with all the goods of a certain class which B may require :

A contracts with B to take from B a lease of a certain house for a specified term, at a specified rent, "if the drawing-room is handsomely decorated," even if it is held to have so much certainty that compensation can be recovered for its breach :

A contracts to marry B :

The above contracts cannot be specifically enforced.

to c.—A, the owner of a refreshment-room, contracts with B to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. A refuses to perform his contract. The case is one for compensation, and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

to d.—A and B contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. This contract cannot be specifically performed, for, if it were so performed, either A or B might at once dissolve the partnership.

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to *e.*—A is a trustee of land with power to lease it for seven years. He enters into a contract with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced.

The directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

Two trustees, A and B, empowered to sell trust-property worth a lăkh of rupees, contract to sell it to C for Rs. 30,000. The contract is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property, and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

to *f.*—A company, existing for the sole purpose of making and working a railway, contracts for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced.

to *g.*—A contracts to let for twenty-one years to B the right to use such part of a certain railway made by A as was upon B's land, and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine-power, and that A should, during the term, keep the whole railway in good repair. Specific performance of this contract must be refused to B.

to *h.*—A contracts to pay an annuity to B for the lives of C and D. It turns out that, at the date of the contract, C, though supposed by A and B to be alive, was dead. The contract cannot be specifically performed.

(c) *Of the Discretion of the Court.*

22. The jurisdiction to decree specific performance is discretionary, and

Discretion as to decreeing specific performance. The Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary, but sound and reasonable, guided by judicial principles, and capable of correction by a Court of appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance:—

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

Illustrations.

(a.) A, a tenant for life of certain property, assigns his interest therein to B. C contracts to buy, and B contracts to sell, that interest. Before the contract is completed, A receives a mortal injury, from the effects of which he dies the day after the contract is executed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance of the contract. If B knew the fact, and C did not, specific performance of the contract should be refused to B.

(b.) A contracts to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact, the value of C's interest depends on the result of certain partnership accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the contract should be refused to A.

(c.) A contracts to sell, and B contracts to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A conceals it from him. Specific performance of the contract should be refused to A.

(d.) A's property is put up to auction. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present, seeing the vendor's attorney bidding, think that he is a mere puffer, and cease to compete. The lot is knocked down to B at a low price. Specific performance of the contract should be refused to B.

1877. II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance
Act 1. would involve no such hardship on the plaintiff.

Illustrations.

(e.) A is entitled to some land under his father's will on condition that, if he sells it within twenty-five years, half the purchase-money shall go to B. A, forgetting the condition, contracts, before the expiration of the twenty-five years, to sell the land to C. Here the enforcement of the contract would operate so harshly on A that the Court will not compel its specific performance in favour of C.

(f.) A and B, trustees, join their beneficiary, C, in a contract to sell the trust-estate to D, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase-money is not nearly enough to discharge those incumbrances, though at the date of the contract the vendors believed it to be sufficient. Specific performance of the contract should be refused to D.

(g.) A, the owner of an estate, contracts to sell it to B, and stipulates that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property not known to either to be part of it. Specific performance of the contract should be refused to B, unless he waives his claim to the unknown property.

(h.) A contracts with B to sell him certain land, and to make a road to it from a certain railway-station. It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to B, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.

(i.) A, a lessee of mines, contracts with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to B.

(j.) A contracts to buy certain land from B. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(k.) A contracts with B to buy from B's manufactory, and not elsewhere, all the goods of a certain class used by B in his trade. The Court cannot compel B to supply the goods, but if he does not supply them, A may be ruined, unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to B.

The following is a case in which the Court may properly exercise a discretion to decree specific performance:—

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

Illustration.

A sells land to a railway-company, who contracts to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the contract to execute the works should be decreed in favour of A.

(d) *For whom Contracts may be specifically enforced.*

Who may obtain specific performance. 23. Except as otherwise provided by this chapter, the specific performance of a contract may be obtained by—

(a) any party thereto;

(b) the representative in interest, or the principal, of any part thereto: provided that, where the learning, skill, solvency, or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed;

(c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder ; 1877.
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(d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman ;

(e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title, and the reversigner is entitled to the benefit of such covenant ;

(f) a reversioner in remainder, where the agreement in such a covenant, and the reversioner is entitled to the benefit thereof, and will sustain material injury by reason of its breach ;

(g) when a public company has entered into a contract, and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation ;

(h) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company.

(e) *From whom Contracts cannot be specifically enforced.*

24. Specific performance of a contract cannot be enforced in favour of a person—
Personal bars to the relief.

(a) who could not recover compensation for its breach ;

(b) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed ;

(c) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract ; or

(d) who, previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made and was then in force.

Illustrations

to clause a.—A, in the character of agent for B, enters into an agreement with C to buy C's house. A is in reality acting, not as agent for B, but on his own account. A cannot enforce specific performance of this contract.

to clause b.—A contracts to sell B a house and to become tenant thereof for a term of fourteen years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the contract.

A contracts to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A, without B's consent, fells the trees. A cannot enforce specific performance of the contract.

A, holding land under a contract with B for a lease, commits waste, or treats the land in an unhusbandlike manner. A cannot enforce specific performance of the contract

A contracts to let, and B contracts to take, an unfinished house, B contracting to finish the house, and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner ; he cannot enforce the contract specifically, though A and B may sue each other for compensation for breach of it.

to clause c.—A contracts to let, and B contracts to take, a house for a specified term at a specified rent. B refuses to perform the contract. A thereupon sues for, and obtains, compensation for the breach. A cannot obtain specific performance of the contract.

Contracts to sell property by one who has no title, or who is a voluntary settler.

25. A contract for the sale or letting of property, whether moveable or immoveable, cannot be specifically enforced in favour of a vendor or lessor—

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(a) who, knowing himself not to have any title to the property, has contracted to sell or let the same ;

(b) who, though he entered into the contract believing that he had a good title to the property, cannot, at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt ;

(c) who, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the subject-matter of the contract.

Illustrations.

(a.) A, without G's authority, contracts to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this contract, even though C is willing to confirm it.

(b) A bequeaths his land to trustees, declaring that they may sell it with the consent in writing of B. B gives a general prospective assent in writing to any sale which the trustees may make. The trustees then enter into a contract with C to sell him the land. C refuses to carry out the contract. The trustees cannot specifically enforce this contract, as, in the absence of 'B's consent to the particular sale to C, the title which they can give C is, as the law stands, not free from reasonable doubt.

(c.) A, being in possession of certain land, contracts to sell it to Z. On enquiry it turns out that A claims the land as heir of B, who left the country several years before, and is generally believed to be dead, but of whose death there is no sufficient proof. A cannot compel Z specifically to perform the contract.

(d) A, out of natural love and affection, makes a settlement of certain property on his brothers and their issue, and afterwards enters into a contract to sell the property to a stranger. A cannot enforce specific performance of this contract so as to override the settlement, and thus prejudice the interests of the persons claiming under it.

(f) *For whom Contracts cannot be specifically enforced except with a variation.*

26. Where a plaintiff seeks specific performance of a contract in writing, Non-enforcement except to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases (namely) :—

(a) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it ;

(b) where by fraud, mistake of fact, or surprise, the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff ;

(c) where the defendant, knowing the terms of the contract, and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part which adds to the contract, but which he refuses to fulfil ;

(d) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce ;

(e) where the parties have, subsequently to the execution of the contract, contracted to vary it.

Illustrations.

(a.) A, B, and C, sign a writing, by which they purport to contract each to enter into a bond to D for Rs. 1,000. In a suit by D, to make A, B, and C separately liable each to the extent of Rs. 1,000, they prove that the word 'each' was inserted by mistake ; that the intention was that they should give a joint bond for Rs. 1,000. D can obtain the performance sought only with the variation thus set up.

(b.) A sues B to compel specific performance of a contract in writing to buy a dwelling-house. B proves that he assumed that the contract included an adjoining yard, and the contract was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the contract, except with the variation set up by B. 1877.
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(c.) A contracts in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the contract, B proposed orally that he should be at liberty to substitute for the strip mentioned in the contract another strip of A's land of the same dimensions, and to this A expressly assented. B then signed the written contract. A cannot obtain specific performance of the written contract, except with the variation set up by B.

(d.) A and B enter into negotiations for the purpose of securing land to B for his life, with remainder to his issue. They execute a contract the terms of which are found to confer an absolute ownership on B. The contract so framed cannot be specifically enforced.

(e.) A contracts in writing to let a house to B, for a certain term, at the rent of Rs. 100 per month, putting it first into tenantable repair. The house turns out to be not worth repairing; so, with B's consent, A pulls it down, and erects a new house in its place: B contracting orally to pay rent at Rs. 120 per mensem. B then sues to enforce specific performance of the contract in writing. He cannot enforce it except with the variations made by the subsequent oral contract.

(g) Against whom Contracts may be specifically enforced.

Relief against parties and persons claiming under them by subsequent title.

27. Except as otherwise provided by this chapter, specific performance of a contract may be enforced against—

(a) either party thereto;
(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract, and known to the plaintiff, might have been displaced by the defendant;

(d) when a public company has entered into a contract, and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;

(e) when the promoters of a public company have, before its incorporation, entered into a contract, the company: provided that the company has ratified and adopted the contract, and the contract is warranted by the terms of the incorporation.

Illustrations

to clause b.—A contracts to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the contract specifically.

A contracts to sell certain land to B for Rs. 5,000. A afterwards conveys the land for Rs. 6,000 to C, who has notice of the original contract. B may enforce specific performance of the contract as against C.

A contracts to sell land to B for Rs. 5,000. B takes possession of the land. Afterwards A sells it to C for Rs. 6,000. C makes no enquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce specific performance of the contract against C.

A contracts, in consideration of Rs. 1,000, to bequeath certain of his lands to B. Immediately after the contract A dies intestate, and C takes out administration to his estate. B may enforce specific performance of the contract against C.

A contracts to sell certain land to B. Before the completion of the contract A becomes an lunatic, and C is appointed his committee. B may specifically enforce the contract against C.

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to clause c.—A, the tenant for life of an estate, with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, contracts to sell the estate to C, who has notice of the settlement. Before the sale is completed, A dies. C may enforce specific performance of the contract against B.

A and B are joint tenants of land, his undivided moiety of which either may alien in his lifetime, but which, subject to that right, devolves on the survivor. A contracts to sell his moiety to C, and dies. C may enforce specific performance of the contract against B.

(h) *Against whom Contracts cannot be specifically enforced.*

What parties cannot be compelled to perform.

28. Specific performance of a contract cannot be enforced against a party thereto in any of the following cases:—

(a) if the consideration to be received by him is so grossly inadequate, with reference to the state of things existing at the date of the contract, as to be, either by itself or coupled with other circumstances, evidence of fraud, or of undue advantage taken by the plaintiff;

(b) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled;

(c) if his assent was given under the influence of mistake of fact, misapprehension, or surprise: provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced.

Illustrations

to clause c.—A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property. B cannot insist on the sale being completed.

A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to 20 bighas of this land, but the auctioneer inadvertently sells the whole to B, who has not notice of the revocation. B cannot enforce specific performance of the agreement.

(i) *The effect of dismissing a Suit for Specific Performance.*

29. The dismissal of a suit for specific performance of a contract, or part thereof, shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be.

Bar of suit for breach after dismissal.

(j) *Awards and directions to execute Settlement.*

Application of preceding sections to awards and testamentary directions to execute settlements.

30. The provisions of this chapter as to contracts shall, *mutatis mutandis*, apply to awards and to directions in a will or codicil to execute a particular settlement.

CHAPTER III.—OF THE RECTIFICATION OF INSTRUMENTS.

31. When, through fraud or a mutual mistake of the parties, a contract

When instrument may be rectified.

or other instrument in writing does not truly express their intention, either party, or his representative in interest, may institute a suit to have the instrument rectified; and if the Court find it clearly proved that there has been fraud or mistake

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in framing the instrument, and ascertain the real intention of the parties in executing the same, the Court may, in its discretion, rectify the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

Illustrations.

(a.) A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which, through B's fraud, all three godowns are included. Of the two godowns which were fraudulently included, B gives one to C, and lets the other to D for a rent, neither C nor D having any knowledge of the fraud. The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C; but it cannot be rectified so as to affect D's lease.

(b.) By a marriage-settlement, A, the father of B, the intended wife, covenants with C, the intended husband, to pay to C, his executors, administrators, and assigns, during A's life, an annuity of Rs. 5,000. C dies insolvent, and the official assignee claims the annuity from A. The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement, and decree that the assignee has no right to any part of the annuity.

32. For the purpose of rectifying a contract in writing, the Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement.

Presumption as to intent of parties.

33. In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

Principles of rectification.

34. A contract in writing may be first rectified, and then, if the plaintiff has so prayed in his plaint, and the Court thinks fit, specifically enforced.

Specific enforcement of rectified contract.

Illustration.

A contracts in writing to pay his attorney, B, a fixed sum in lieu of costs. The contract contains mistakes as to the name and rights of the client, which, if construed strictly, would exclude B from all rights under it. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

CHAPTER IV.—OF THE RESCISSION OF CONTRACTS.

35.* Any person interested in a contract in writing may sue to have it rescinded, and such rescission may be adjudged by the Court in any of the following cases, namely :—

- (a) where the contract is voidable or terminable by the plaintiff;
- (b) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff;
- (c) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums, which the Court has ordered him to pay.

* In ss. 35 and 36 the words, "in writing," have been repealed by Act IV. of 1882 (Transfer of Property) in territories in which this Act is in force.

When the purchaser or lessee is in possession of the subject-matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as such possessor.

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract either so far as regards the party in default, or altogether, as the justice of the case may require.

Illustrations

to *a*.—A sells a field to B. There is a right of way over the field of which A has direct personal knowledge, but which he conceals from B. B is entitled to have the contract rescinded.

to *b*.—A, an attorney, induces his client B, a Hindú widow, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

36.* Rescission of a contract in writing cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

Rescission for mistake.

37. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

Alternative prayer for rescission in suit for specific performance.

38. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

Court may require party rescinding to do equity.

CHAPTER V.—OF THE CANCELLATION OF INSTRUMENTS.

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may, in its discretion, so adjudge it, and order it to be delivered up and cancelled.

If the instrument has been registered under the Indian Registration Act, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered, and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

Illustrations.

(*a*.) A, the owner of a ship, by fraudulently representing her to be seaworthy, induces B, an underwriter, to insure her. B may obtain the cancellation of the policy.

(*b*.) A conveys land to B, who bequeaths it to C, and dies. Thereupon D gets possession of the land, and produces a forged instrument, stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

* In ss. 35 and 36 the words, "in writing," have been repealed by Act IV. of 1882 (Transfer of Property) in territories in which this Act is in force.

(c.) A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument dated the 1st January 1877. Soon after that day, A fraudulently grants to C a lease of part of the lands, dated the 1st October 1876, and procures the lease to be registered under the Indian Registration Act. B may obtain the cancellation of this lease.

(d.) A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rs. 30,000, to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered according to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills.

40. Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part, and allow it to stand for the residue.

What instruments may be partially cancelled.

Illustration.

A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand in other respects.

41. On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

Power to require party for whom instrument is cancelled to make compensation.

CHAPTER VI.—OF DECLARATORY DECREES.

42. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may, in its discretion, make therein a declaration that he is so entitled, and the plaintiff need not, in such suit, ask for any further relief.

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Bar to such declaration.

Explanation.—A trustee of property is a person interested to deny a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Illustrations.

(a.) A is lawfully in possession of certain land. The inhabitants of a neighbouring village claim a right of way across the land. A may sue for a declaration that they are not entitled to the right so claimed.

(b.) A bequeaths his property to B, C, and D, 'to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children.' No such children are in existence. In a suit against A's executor, the Court may declare whether B, C, and D, took the property absolutely, or only for their lives, and it may also declare the interests of the children before their rights are vested.

(c.) A covenants that, if he should at any time be entitled to property exceeding one lakh of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court may make the declaration.

(d.) A alienates to B property in which A has merely a life-interest. The alienation is invalid as against C, who is entitled as reversioner. The Court may, in a suit by C against A and B, declare that C is so entitled.

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(e.) The widow of a sonless Hindú alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity, and was therefore void beyond the widow's lifetime.

(f.) A Hindú widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(g.) A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. A may obtain a declaration of his right to hold the property.

(h.) A bequeaths property to B for his life, with remainder to B's wife and her children, if any, by B, but if B die without any wife or children, to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children may, in B's lifetime, institute a suit against C, and obtain therein a declaration that they are truly the wife and children of B.

43. A declaration made under this chapter is binding only on the parties

to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

Illustration.

A, a Hindú, in a suit to which B, his alleged wife, and her mother, are defendants, seeks a declaration that his marriage was duly solemnized, and an order for the restitution of his conjugal rights. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

CHAPTER VII.—OF THE APPOINTMENT OF RECEIVERS.

Appointment of receivers discretionary.

44. The appointment of a receiver pending a suit is a matter resting in the discretion of the Court.

The mode and effect of his appointment, and his rights, power, duties, and liabilities, are regulated by the Code of Civil Procedure.

Reference to Code of Civil Procedure.

CHAPTER VIII.—OF THE ENFORCEMENT OF PUBLIC DUTIES.

45. Any of the High Courts of Judicature at Fort William, Madras,

and Bombay, may make an order requiring any specific act to be done or forbore, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or inferior Court of Judicature: provided—

Power to order public servants and others to do certain specific acts.

(a) that an application for such order be made by some person whose property, franchise, or personal right, would be injured by the forbearing or doing (as the case may be) of the said specific act;

(b) that such doing or forbearing is, under any law for the time being in force, clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character;

(c) that in the opinion of the High Court such doing or forbearing is consonant to right and justice;

(d) that the applicant has no other specific and adequate legal remedy ; 1877. and

(e) that the remedy given by the order applied for will be complete. Act 1.

Exemptions from such power. Nothing in this section shall be deemed to authorize any High Court—

(f) to make any order binding on the Secretary of State for India in Council, on the Governor-General in Council, on the Governor of Madras in Council, on the Governor of Bombay in Council, or on the Lieutenant-Governor of Bengal ;

(g) to make any order on any other servant of the Crown, as such, merely to enforce the satisfaction of a claim upon the Crown ; or

(h) to make any order which is otherwise expressly excluded by any law for the time being in force.

46. Every application under section 45 must be founded on an affidavit of the person injured, stating his right in the matter in question, his demand of justice, and the denial thereof ; and the High Court may, in its discretion, make the order applied for absolute in the first instance or refuse it, or grant a rule to show cause why the order applied for should not be made.

If, in the last case, the person, Court, or corporation complained of, shows no sufficient cause, the High Court may first make an order in the alternative, either to do or forbear the act mentioned in the order, or to signify some reason to the contrary, and make an answer thereto by such day as the High Court fixes in this behalf.

47. If the person, Court, or corporation, to whom or to which such order is directed, makes no answer, or makes an insufficient or a false answer, the High Court may then issue a peremptory order to do or forbear the act absolutely.

48. Every order under this chapter shall be executed, and may be appealed from, as if it were a decree made in the exercise of the ordinary original civil jurisdiction of the High Court.

49. The costs of all applications and orders under this chapter shall be in the discretion of the High Court.

50. Neither the High Court nor any Judge thereof shall hereafter issue any writ of *mandamus*.

51. Each of the said High Courts shall, as soon as conveniently may be, frame rules to regulate the procedure under this chapter ; and until such rules are framed, the practice of such Court as to applications for and grants of writs of *mandamus* shall apply, so far as may be practicable, to applications and orders under this chapter.

PART III.—OF PREVENTIVE RELIEF.

CHAPTER IX.—OF INJUNCTIONS GENERALLY.

Preventive relief how granted.

52. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

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53. Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

CHAPTER X.—OF PERPETUAL INJUNCTIONS.

54. Subject to the other provisions contained in, or referred to by, this chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II. of this Act.

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely):—

- (a) where the defendant is trustee of the property for the plaintiff;
- (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
- (c) where the invasion is such that pecuniary compensation would not afford adequate relief;
- (d) where it is probable that pecuniary compensation cannot be got for the invasion;
- (e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Explanation.—For the purpose of this section a trademark is property.

Illustrations.

(a.) A lets certain land to B, and B contracts not to dig sand or gravel thereout. A may sue for an injunction to restrain B from digging in violation of his contract.

(b.) A trustee threatens a breach of trust. His co-trustees, if any, should, and the beneficial owners may, sue for an injunction to prevent the breach.

(c.) The directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may sue for an injunction to restrain them.

(d.) The directors of a fire and life-insurance company are about to engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them.

(e.) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(f.) A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(g.) A makes a settlement (not founded on marriage or other valuable consideration) of an estate on B and his children. A then contracts to sell the estate to C. B or any of his children may sue for an injunction to restrain the sale.

(h.) In the course of A's employment as a wakil, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may sue for an injunction to restrain A from so doing.

(i.) A is B's medical adviser. He demands money of B, which B declines to pay. A then threatens to make known the effect of B's communications to him as patient. This is contrary to A's duty, and B may sue for an injunction to restrain him from so doing.

(j.) A, the owner of two adjoining houses, lets one to B, and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may sue for an injunction to restrain them from so doing.

(k.) A lets certain arable lands to B for purposes of husbandry, but without any express contract as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seed injurious thereto, and requiring many years to eradicate. A may sue for an injunction to restrain B from sowing the lands in contravention of his implied contract to use them in a husbandlike manner.

(l.) A, B, and C, are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership-property. B and C may, without seeking a dissolution of the partnership, sue for an injunction to restrain A from doing the act.

(m.) A, a Hindú widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir-expectant may sue for an injunction to restrain her.

(n.) A, B, and C, are members of an undivided Hindú family. A cuts timber growing on the family-property, and threatens to destroy part of the family-house, and to sell some of the family-utensils. B and C may sue for an injunction to restrain him.

(o.) A, the owner of certain houses in Calcutta, becomes insolvent. B buys them from the official assignee, and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may sue for an injunction to restrain further acts of trespass.

(p.) The inhabitants of a village claim a right of way over A's land. In a suit against several of them, A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over the land. A may sue for an injunction to restrain them.

(q.) A, in an administration-suit, to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may sue for an injunction to restrain B.

(r.) A and B are in possession of contiguous lands and of the mines underneath them. A works his mine so as to extend under B's mine, and threatens to remove certain pillars which help to support B's mine. B may sue for an injunction to restrain him from so doing.

(s.) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may sue for an injunction restraining A from making the noise.

(t.) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.

(u.) A infringes B's patent. If the Court is satisfied that the patent is valid, and has been infringed, B may obtain an injunction to restrain the infringement.

(v.) A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(w.) A improperly uses the trademark of B. B may obtain an injunction to restrain the user, provided that B's use of the trademark is honest.

(x.) A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.

(y.) A, a very eminent man, writes letters on family-topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and may sue for an injunction to restrain C from publishing them.

(z.) A carries on a manufactory, and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival manufacturer. A may sue for an injunction to restrain B from disclosing the process.

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55. When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may, in its direction, grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Illustrations.

(a.) A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the Indian Limitation Act, Part IV. B may obtain an injunction not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

(b.) A builds a house with eaves projecting over B's land. B may sue for an injunction to pull down so much of the eaves as so project.

(c.) In the case put as illustration i to section 54, the Court may also order all written communications made by B as patient to A, as medical adviser, to be destroyed.

(d.) In the case put as illustration y to section 54, the Court may also order A's letters to be destroyed.

(e.) A threatens to publish statements concerning B which would be punishable under Chapter XXI. of the Indian Penal Code. The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to B's property.

(f.) A, being B's medical adviser, threatens to publish B's written communications with him showing that B has led an immoral life. B may obtain an injunction to restrain the publication.

(g.) In the cases put as illustrations v and w to section 54, and as illustrations e and f to this section, the Court may also order the copies produced by piracy, and the trademarks, statements, and communication, therein respectively mentioned, to be given up or destroyed.

Injunction when refused.

56. An injunction cannot be granted—

(a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to stay proceedings in a Court not subordinate to that from which the injunction is sought;

(c) to restrain persons from applying to any legislative body;

(d) to interfere with the public duties of any department of the Government of India or the Local Government, or with the sovereign acts of a Foreign Government;

(e) to stay proceedings in any criminal matter;

(f) to prevent the breach of a contract the performance of which would not be specifically enforced;

(g) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(h) to prevent a continuing breach in which the applicant has acquiesced;

(i) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust;

(j) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court;

(k) where the applicant has no personal interest in the matter.

Illustration.

(a.) A seeks an injunction to restrain his partner, B, from receiving the partnership debts and effects. It appears that A had improperly possessed himself of the books of the firm, and refused B access to them. The Court will refuse the injunction.

(b.) A manufactures and sells crucibles, designating them as "patent plumbago crucibles," though, in fact, they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

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(c.) A sells an article called "Mexican Balm," stating that it is compounded of divers rare essences, and has sovereign medicinal qualities. B commences to sell a similar article, to which he gives a name and description such as to lead people into the belief that they are buying B's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog's lard. A's use of his description is not an honest one, and he cannot obtain an injunction.

57. Notwithstanding section 56, clause f, where a contract comprises an injunction to perform negative affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement; provided that the applicant has not failed to perform the contract so far as it is binding on him.

Illustrations.

(a.) A contracts to sell to B for Rs. 1,000 the good-will of a certain business unconnected with business premises, and further agrees not to carry on that business in Calcutta. B pays A the Rs. 1,000, but A carries on the business in Calcutta. The Court cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Calcutta.

(b.) A contracts to sell to B the good-will of a business. A then sets up a similar business close by B's shop, and solicits his old customers to deal with him. This is contrary to his implied contract, and B may obtain an injunction to restrain A from soliciting the customers, and from doing any act whereby their good-will may be withdrawn from B.

(c.) A contracts with B to sing for twelve months at B's theatre, and not to sing in public elsewhere. B cannot obtain specific performance of the contract to sing, but is entitled to an injunction restraining A from singing at any other place of public entertainment.

(d.) A contracts with B that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of this contract. But he is entitled to an injunction restraining B from serving a rival house as clerk.

(e.) A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B on a day named, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.

*SPECIFIC RELIEF.*SCHEDULE—(*see section 2*).

ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Number and year. .	Subject.			Extent of repeal.
VIII. of 1859 ...	Civil Procedure	...	...	Sections 15 and 192.
XIV. of 1859 ...	Limitation	...	...	Section 15.
XXIII. of 1861 ...	Civil Procedure	...	...	Section 26.
IX. of 1872 ...	Contract	...	...	In section 28, the second clause of exception 1.

GENERAL STAMP ACT, NO. I. OF 1879.

RECEIVED THE G.-G.'s ASSENT ON THE 17TH JANUARY 1879.

An Act to consolidate and amend the law relating to Stamps.

CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called "The Indian Stamp Act, 1879."

Local extent. It extends to the whole of British India ;

Commencement. And it shall come into force on the first day of April, 1879.

2. On and after that day, the Acts specified in the third schedule shall be repealed to the extent specified in the third column of the same schedule. But all rules made under the General Stamp Act, 1869, and then in force, shall, so far as they are consistent with this Act, be deemed to have been made hereunder. And all references made to the General Stamp Act, 1869, in enactments passed subsequently thereto, shall be deemed to be made to this Act.

Repeal of enactments. 3. In this Act, unless there is something repugnant in the subject or context,—

"Banker." (1.) "Banker" includes a bank and any person acting as a banker :

"Bill of exchange." (2.) "Bill of exchange" includes a hundi :

(3.) "Bill of lading" means any instrument signed by the owner of a vessel or his agent, acknowledging the receipt of goods therein described, and undertaking to deliver

the same at a place and to a person therein mentioned or indicated :

"Bond." (4.) "Bond" means—

(a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be ;

(b) any instrument attested by a witness, and not payable to order or bearer, whereby a person obliges himself to pay money to another ; and

(c) any instrument so attested whereby a person obliges himself to deliver grain or other agricultural produce to another :

(5.) "Chargeable" means, as applied to an instrument executed or first executed after this Act comes into force, chargeable under this Act, and, as applied to any other

instrument, chargeable under the law in force in British India when such instrument was executed, or, where several persons executed the instrument at different times, first executed :

"Cheque."

(6.) "Cheque" means a bill of exchange drawn on a banker and payable on demand :

(7.) "Chief Controlling Revenue Authority" means, in the Presidency

"Chief Controlling Revenue Authority." of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the North-Western Provinces, the Board of Revenue : in the Presidency of Bombay, outside Sind and the limits of the town of Bombay, a Revenue Commissioner : in Sind, the Commissioner : in the Panjáb, the Financial Commissioner ; and elsewhere, the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office :

(8.) "Collector" means, within the limits of the towns of Calcutta,

"Collector."

Madras, and Bombay, the Collector of Calcutta, Madras, and Bombay, respectively, and without those limits the Collector of a District, and includes a Deputy Commissioner and any officer whom the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office :

"Conveyance."

(9.) "Conveyance" means any instrument by which property (whether moveable or immoveable) is transferred on sale :

(10.) "Duly stamped," as applied to an instrument, means stamped, or

"Duly stamped."

written upon paper bearing an impressed stamp, in accordance with the law in force in British India when such instrument was executed or first executed :

(11.) "Instrument of partition" means any instrument whereby co-

owners of any property divide or agree to divide

"Instrument of partition." such property in severalty, and includes also a final order for effecting a partition passed by any Revenue Authority :

"Lease."

(12.) "Lease" means a lease of immoveable property, and includes also

(a) a pattá,

(b) a kabúliyat or other undertaking in writing, not being a counterpart of a lease to cultivate, occupy, or pay or deliver rent for, immoveable property,

(c) any instrument by which tolls of any description are let, and

(d) any writing on an application for a lease intended to signify that the application is granted :

(13.) "Mortgage-deed" includes every instrument whereby, for the

"Mortgage-deed."

purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to or in favour of another, a right over specified property :

"Paper."

(14.) "Paper" includes vellum, parchment, or any other material on which an instrument may be written :

(15.) "Policy of insurance" means any instrument by which one

"Policy of insurance."

person, in consideration of a premium, engages to indemnify another against loss, damage, or liability arising from an unknown or contingent event :

It includes a life-policy :

(16.) "Power-of-attorney" means any instrument (not chargeable with

"Power-of-attorney."

a fee under the law relating to Court-fees for the time being in force) empowering a specified person to act in the stead of the person executing it :

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(17.) "Receipt" means any note, memorandum, writing, or advertise-

"Receipt."

ment, whereby any money or any bill of exchange, cheque, or promissory note, is acknowledged to

have been received, or whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or which signifies or imports any such acknowledgment, whether the same is or is not signed with the name of any person :

"Schedule."

(18.) "Schedule" means a schedule to this Act annexed :

"Settlement."

(19.) "Settlement" means any non-testamentary disposition, in writing, of moveable or immoveable property, made—

(a) in consideration of marriage,

(b) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or

(c) for any religious or charitable purpose :

It includes an agreement in writing to make such a disposition :

"Vessel."

(20.) "Vessel" means anything made for the conveyance by water of human beings or property :

"Written," "Writing."

(21.) "Written" and "writing" include every mode in which words or figures can be expressed upon paper.

"Schedules to be read part of Act.

4. The schedules and everything therein contained shall be read and construed as part of this Act.

CHAPTER II.

STAMP-DUTIES.

A.—Of the Liability of Instruments to Duty.

5. Subject to the exemptions contained in the second schedule, the Instruments chargeable with following instruments shall be chargeable with duty of the amount indicated in the first schedule as the proper duty therefor respectively, that is to say—

(a) every instrument mentioned in the first schedule, and which, not having been previously executed by any person, is executed in British India on or after the first day of April, 1879 ;

(b) every bill of exchange, cheque, or promissory note drawn or made out of British India on or after that day, and accepted or paid, or presented for acceptance or payment, or endorsed, transferred, or otherwise negotiated, in British India ; and

(c) every instrument (other than a bill of exchange, cheque, or promissory note) mentioned in the first schedule, which, not having been previously executed by any person, is executed out of British India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in British India, and is received in British India.

6. Where, in the case of any sale, lease, mortgage, or settlement, several

Several instruments used in instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed for the conveyance, lease, mortgage, or settlement in the first schedule, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that schedule.

The parties may determine for themselves which of the instruments so employed shall, for the purposes of this section, be deemed to be the principal instrument.

7. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

Subject to the provisions of the first clause of this section, an instrument so framed as to come within two or more of the descriptions in the first schedule shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties; but nothing herein contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty, and in respect of which the proper duty has been paid.

Power to reduce or remit duty. 8. The Governor-General in Council may, by order published in the *Gazette of India*,

(a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of British India, the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and

(b) cancel or vary such order to the extent of the powers hereby given.

B.—Of Stamps and the mode of using them.

9. Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instrument, by means of stamps—

(a) according to the provisions herein contained, or
(b) when no such provision is applicable thereto—as the Governor-General in Council may by rule direct.

The rules made under this section may, among other matters, regulate—

(1) in the case of each kind of instrument—the description of stamps which may be used,

(2) in the case of instruments stamped with impressed stamps—the number of stamps which may be used,

(3) in the case of hundis—the size of the paper on which they are written.

Use of adhesive stamps. 10. The following instruments may be stamped with adhesive stamps, namely:—

(a) instruments chargeable with the duty of one anna, except parts of bills of exchange payable otherwise than on demand and drawn in sets;

(b) bills of exchange, cheques, and promissory notes drawn or made out of British India;

(c) entry as an advocate, vakil, or attorney on the roll of a High Court;

(d) notarial acts; and

(e) transfers by endorsement of shares of public Companies and Associations.

11. Whoever affixes an adhesive stamp to any instrument chargeable with duty, and which has been executed by any person, shall, when affixing such stamp, cancel the same so that it cannot be used again;

and whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again shall, so far as such stamp is concerned, be deemed to be unstamped.

12. Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instruments, and cannot be used for or applied to any other instrument.

How instruments stamped with impressed stamps are to be written.

13. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written: provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

Instrument written contrary to section 12 or 13 deemed unstamped.

14. Every instrument written in contravention of section 12 or 13 shall be deemed to be unstamped.

15. Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last-mentioned duty shall, if application be made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument in such manner as the Governor-General in Council may by rule prescribe.

Denoting duty.

C.—Of the Time of Stamping Instruments.

16. All instruments chargeable with duty, and executed by any person in British India, shall be stamped before or at the time of execution.

Instruments executed in British India.

17. Every instrument chargeable with duty executed only out of British India, and not being a bill of exchange, cheque, or promissory note, may be stamped within three months after it has been first received in British India; or, where such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, and he shall stamp the same, in such manner as the Governor-General in-Council may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

Instruments other than bills, cheques, and notes executed out of British India.

18. The first holder in British India of any bill of exchange, cheque, or promissory note drawn or made out of British India, shall, before he presents the same for acceptance or payment, or endorses, transfers, or otherwise negotiates the same in British India, affix thereto the proper stamp, and cancel the same:

Provided that if, at the time, any such bill, cheque, or note, comes into the hands of any holder thereof in British India, the proper adhesive stamp

Bills, cheques, and notes drawn out of British India.

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is affixed thereto and cancelled in manner prescribed by section 11, and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled. But nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

D.—Of Valuations for Duty.

19. Where an instrument is chargeable with *ad valorem* duty in respect of an amount expressed in pounds sterling, pounds currency, francs, or dollars, such duty shall be calculated on the value of such money in the currency of British India according to the following scale:—

One pound sterling or pound currency is equivalent to ten rupees :

One hundred francs are equivalent to forty rupees :

One Mexican or China dollar is equivalent to two rupees four annas.

20. Where an instrument is chargeable with *ad valorem* duty in respect of any money expressed in any other foreign or colonial currency, such duty shall be calculated on the value of such money in the currency of British India according to the current rate of exchange on the day of the date of the instrument.

21. Where an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable security, such duty shall be calculated on the value of such stock or security according to the average price thereof on the day of the date of the instrument.

22. Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

23. Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein.

24. Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money, or stock, is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty.

25. Where an instrument is executed to secure the payment of an annuity, or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument, or the consideration for such conveyance (as the case may be), shall, for the purposes of this Act, be deemed to be—

(a) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount ;

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(b) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years next after the date of such instrument or conveyance; and

(c) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the total amount which will or may be payable as aforesaid during the period of twelve years next after the date of such instrument or conveyance.

26. Where the amount or value of the subject-matter of any instrument

Stamp where value of subject-matter is indeterminate. chargeable with *ad valorem* duty cannot be, or (in the case of an instrument executed before this Act comes into force) could not have been, ascertained, at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient.

27. The consideration (if any) and all other facts and circumstances

Facts affecting duty to be set forth in instrument. affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

28. (a) Where any property has been contracted to be sold for one

Direction as to duty in case of certain conveyances. consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration.

(b) Where property contracted to be purchased for one consideration for the whole by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(c) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(d) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the whole, or any part thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration, and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the consideration paid by the sub-purchasers:

Provided that the duty on such last-mentioned conveyance shall in no case be less than one rupee.

(e) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him which is chargeable with *ad valorem* duty in respect of the consideration paid by him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller; or where such duty would exceed five rupees, with a duty of five rupees.

E.—Duty by whom payable.

29. In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne—

(a) in the case of any instrument described in numbers 2, 11, 13, 14, 15, 24, 28, 29, 30, 44, 53, 54, 55, 57, and 60 (a) and (b) of the first schedule—by the person drawing, making, or executing such instrument:

(b) in the case of a policy of insurance—by the insured:

(c) in the case of a conveyance—by the grantee: in the case of a lease or agreement to lease—by the lessee or intended lessee:

(d) in the case of a counterpart of a lease—by the lessor:

(e) in the case of an instrument of partition—by the parties thereto in proportion to their respective shares in the property comprised therein, or when the partition is made in execution of an order passed by a Revenue Authority, in such proportion as such Authority directs:

(f) in the case of an instrument of exchange—by the parties in equal shares; and

(g) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates.

CHAPTER III.

ADJUDICATION AS TO STAMPS.

30. When any instrument, whether executed or not, and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than eight annas) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable:

and may, for that purpose, require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

Provided that no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable; and every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

Proviso.

31. When an instrument brought to the Collector under section 30 is, 1879.
 Certificate by Collector. in his opinion, one of a description chargeable with Act 1.
 duty, and

(a) the Collector determines that it is already fully stamped, or

(b) the duty determined by the Collector under section 30, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

Any instrument upon which an endorsement has been made under this section shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

Nothing in this section shall authorize the Collector to endorse—

any instrument executed or first executed in British India, and brought to him after the expiration of one month from the date of its execution or first expiration (as the case may be);

any instrument executed or first executed out of British India, and brought to him after the expiration of three months after it has been first received in British India; or

any instrument chargeable with the duty of one anna, or any bill of exchange or promissory note, when brought to him after the drawing or execution thereof on paper not duly stamped.

32. Every payment of a fee under section 30 shall be made in stamps,

Payment of fees under section 30 how made. or cash, as the Governor-General in Council may by rule direct.

CHAPTER IV.

INSTRUMENTS NOT DULY STAMPED.

Examination and impounding of instruments.

33. Every person having, by law or consent of parties, authority to receive evidence, and

every person in charge of a public office, except an officer of police,

before whom any instrument chargeable, in his opinion, with duty, is produced or comes, in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or first executed:

Provided that nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound any instrument coming before him in the course of any proceeding other than a proceeding under chapter forty* or chapter forty-one† of the Code of Criminal Procedure, or chapter eighteen‡ of the Presidency Magistrates' Act:

Provided also that, in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

* Corresponding with Chap. XII. (Disputes as to Immoveable Property) of Act X. of 1882.

† Corresponding with Chap. XXXVI. (Maintenance of Wives and Children) of Act X. of 1882.

The Local Government may, from time to time, in cases of doubt, determine who shall be deemed to be, for the purpose of this section, persons in charge of public offices.

34. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having, by law or consent of parties, authority to receive evidence, or shall be acted upon, registered, or authenticated by any such person or by any public officer, unless such instrument is duly stamped ;

Proviso.

Provided that—

1st, any such instrument, not being an instrument chargeable with a duty of one anna only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or (in the case of an instrument insufficiently stamped) of the amount required to make up such duty, together with a penalty of five rupees, or when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion ;

2nd, nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court other than a proceeding under chapter forty* or chapter forty-one† of the Code of Criminal Procedure, or chapter eighteen† of the Presidency Magistrates' Act ;

3rd, when an instrument has been admitted in evidence, such admission shall not, except as provided in section 50, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

35. When the person impounding an instrument under section 33 has, by law or consent of parties, authority to receive evidence, and admits such instrument in evidence upon payment of a penalty as provided by section 34, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of the duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

In every other case, the person so impounding an instrument shall send it in original to the Collector.

36. When a copy of an instrument is sent to a Collector under the first paragraph of section 35, he may, if he thinks fit, upon application made to him in this behalf, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument, or

when such instrument has been impounded only because it has been written in contravention of section 12 or section 13, he may refund the whole penalty so paid.

37. When the Collector impounds any instrument under section 33, or receives any instrument sent to him under the second clause of section 35, he shall adopt the following procedure :—

(a.) If he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify, by endorsement thereon, that it is duly stamped, or that it is not so chargeable (as the case may be), and shall,

* Corresponding with Chap. XII. (Disputes as to Immoveable Property) of Act X. of 1882.

† Corresponding with Chap. XXXVI. (Maintenance of Wives and Children) of Act X. of 1882.

upon application made to him in this behalf, deliver such instrument to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct.

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(b.) If the Collector is of opinion that such instrument is chargeable with duty, and is not duly stamped, he shall require the payment of the proper duty, or the amount required to make up the same together with a penalty of five rupees; or if ten times the amount of the proper duty or of the deficient portion thereof exceeds five rupees, then such penalty, not less than five rupees and not more than ten times the amount of such duty or portion, as he thinks fit:

Provided that, when such instrument has been impounded only because it has been written in contravention of section 12 or section 13, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

Every certificate under clause a of this section shall, for the purpose of this Act, be conclusive evidence of the matters stated therein.

Nothing in this section applies to an instrument chargeable with a duty of one anna only, or to a bill of exchange or promissory note.

38. If any instrument chargeable with duty, and which is not duly stamped, is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped, and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake, or urgent necessity, he may, instead of proceeding under sections 33 and 37, receive such amount, and proceed as next hereinafter prescribed.

Nothing in this section applies to an instrument chargeable with a duty of one anna only, or to a bill of exchange or promissory note.

39. When the duty and penalty (if any) leviable in respect of any instrument have been paid under section 34, section 37, or section 38, the person admitting such instrument in evidence, or the Collector (as the case may be), shall certify by endorsement thereon, that the proper duty, or (as the case may be) the proper duty and penalty (stating the amount of each), have been levied in respect thereof, and the name and residence of the person paying them.

Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct:

Provided that no instrument which has been admitted in evidence upon payment of duty and a penalty under section 34 shall be so delivered before the expiration of one month from the day of such impounding, or if the Collector has certified that its further detention is necessary and has not cancelled such certificate:

Provided also that nothing in this section shall affect the Code of Civil Procedure, section 144, clause 3.

40. The payment of a penalty under this chapter in respect of an instrument shall not bar the prosecution of any person who appears to have committed an offence against the stamp-law in respect of such instrument:

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But no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

41. When any duty or penalty has been paid, under section 34, section 37, or section 38, by any person in respect of an instrument, and by agreement, or under the provisions of section 29 or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid; and for the purpose of such recovery any certificate granted in respect of such instrument under section 39 shall be conclusive evidence of the matters therein certified.

42. When any penalty is paid under section 34 or 37, the Chief Controlling Revenue Authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

43. If any instrument sent to a Collector under the second paragraph of section 35 be lost, destroyed, or damaged during transmission, the person sending the same shall not be liable for such loss, destruction, or damage.

When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same may require a copy thereof to be made at the expense of such first-mentioned person, and authenticated by the person impounding such instrument.

44. When any bill of exchange or promissory note chargeable with the duty of one anna, or any cheque, is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and, upon cancelling the same in manner hereinbefore provided, may pay the sum payable upon such bill, note, or cheque, and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill, note, or cheque, shall, so far as respects the duty, be deemed good and valid.

But nothing herein contained shall relieve any person from any penalty he may have incurred in relation to such bill, note, or cheque.

CHAPTER V.

REFERENCE AND REVISION.

45. If any Collector acting under section 30, section 37, or section 38, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue Authority, and such Authority shall consider the case and send a copy of its decision to the Collector, and he shall proceed to assess and charge the duty (if any) in conformity with such decision.

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46. The Chief Controlling Revenue Authority may state any case referred to it under section 45 or otherwise coming to its notice, and refer such case with its own opinion thereon, if the case arises in the territories for the time being administered by the Governor of Fort Saint George in Council or the Governor of Bombay in Council—to the High Court of Judicature at Madras or Bombay, as the case may be: if it arises in the North-Western Provinces or Oudh—to the High Court of Judicature for the North-Western Provinces: if it arises in the territories for the time being administered by the Lieutenant-Governor of the Panjāb—to the Chief Court of the Panjāb: if it arises in the Central Provinces—to the High Court of Judicature at Bombay; and if it arises in any other part of British India—to the High Court of Judicature at Fort William.

Every such case shall be decided by not less than three Judges of the High Court or Chief Court to which it is referred, and in case of difference the opinion of the majority shall prevail.

47. If the High Court or Chief Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue Authority by which it was stated, to make such additions thereto or alterations therein as the Court may direct in that behalf.

48. The High Court or Chief Court, upon the hearing of any such case, shall decide the questions raised thereby, and shall deliver its judgment thereon, containing the grounds on which such decision is founded: and it shall send to the Revenue Authority by which the case was stated, a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Revenue Authority shall, on receiving such copy, dispose of the case conformably to such judgment.

49. If any Court other than a Court mentioned in section 46 feels doubt as to the amount of duty to be paid in respect of any instrument under the first proviso to section 34, the Judge may draw up a statement of the case and refer it with his own opinion thereon for the decision of the High Court or Chief Court to which, if he were the Chief Controlling Revenue Authority, he would, under section 46, refer the same, and such Court shall deal with the case as if it had been referred under section 46, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgment.

References made under this section, when made by a Court subordinate to a District Court, shall be made through the District Court, and, when made by any subordinate Revenue Court, shall be made through the Court immediately superior.

50. When any Court in the exercise of civil or revenue jurisdiction makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 34, the Court to which appeals lie from, or references are made by, such first-mentioned Court, may, of its own motion, or on the application of the Collector, take such order into consideration; and if it is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 34, or without the payment of

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a higher duty and penalty than those paid, may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is to produce the same, and may impound the same when produced.

When any declaration has been recorded under this section, the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument; and thereupon the Collector may, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 39, or in section 40, prosecute any person for any offence against the stamp-law which the Collector considers him to have committed in respect of such instrument:

Provided that no such prosecution shall be instituted where the amount (including duty and penalties) which, according to the determination of such Court, was payable in respect of the instrument under section 34, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty:

Provided also that, except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 39.

CHAPTER VI.

ALLOWANCE FOR SPOILED STAMPS AND STAMPS NO LONGER REQUIRED.

51. Subject to such rules as may be made by the Governor-General in Council as to the evidence which the Collector may require, allowance shall be made by the Collector for impressed stamps spoiled in the cases hereinafter mentioned, namely:—

(a) The stamp on any paper inadvertently and undesignedly spoiled, obliterated, or by any means rendered unfit for the purpose intended, before any instrument written thereon is executed by any person:

(b) The stamp used or intended to be used for any bill of exchange, cheque, or promissory note, signed by or on behalf of the drawer or intended drawer, but not delivered out of his hands to the payee or intended payee, or any person on his behalf, or deposited with any person as a security for the payment of money, or in any way negotiated, issued, or put in circulation, or made use of in any other manner, and which, being a bill of exchange or cheque, has not been accepted by the drawee, and provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange or cheque, to be afterwards written thereon:

(c) The stamp used or intended to be used for any bill of exchange, cheque, or promissory note, signed by or on behalf of the drawer thereof, but which, from any omission or error, has been spoiled or rendered useless, although the same, being a bill of exchange or cheque, may have been presented for acceptance, or accepted or endorsed, or, being a promissory note, may have been delivered to the payee, provided that another completed and duly stamped bill of exchange, cheque, or promissory note, is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, cheque, or note:

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(d) The stamp used for any of the following instruments, that is to say—

- (1) an instrument executed by any party thereto, but afterwards found by a competent Court to be absolutely void in law from the beginning :
- (2) an instrument executed by any person, but afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended :
- (3) an instrument executed by any party thereto, but which, by reason of the death of any person, by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, or to advance any money intended to be thereby secured, cannot be completed so as to effect the intended transaction in the form proposed :
- (4) an instrument executed by any party thereto, which for want of the execution thereof by some material party, and his inability or refusal to sign the same, is, in fact, incomplete and insufficient for the purpose for which it was intended :
- (5) an instrument executed by any party thereto, which, by reason of the refusal of any person to act under the same, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose :
- (6) an instrument executed by any party thereto, which becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument duly stamped :
- (7) an instrument executed by any party thereto, which is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped :

Provided that, in the case of an executed instrument—

- (a) such instrument is given up to be cancelled :
- (b) the application for relief is made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, except where, from unavoidable circumstances, any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, and in that case within six months after the date of execution of the substituted instrument, and except where the spoiled instrument has been sent out of British India, and in that case within six months after it has been received back in British India :

Provided also that, in the case of stamped paper not having any executed instrument written thereon, the application for relief is made within six months after the stamp has been spoiled as aforesaid.

52. When any person has inadvertently used, for an instrument charge-

Allowance for misused stamps. able with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty, or when any stamp used for an instrument has been inadvertently rendered useless under section 14, owing to such instrument having been written in contravention of the provisions of section 12, the Collector may, on application made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person

by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

53. In any case in which allowance is made for spoiled or misused

Allowance under sections 51 stamps, the Collector may give in lieu thereof and 52 how to be made. (a) other stamps of the same description and value, or (b), if required, and he thinks fit, stamps of any other description to the same amount in value, or (c), at his discretion, the same value in money, deducting one anna for each rupee or fraction of a rupee.

54. When any person is possessed of a stamp which has not been spoiled

Allowance for stamps not or rendered unfit or useless for the purpose intended required for use. ed, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp in money, deducting one anna for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction that it was purchased by such person with a *bona fide* intention to use it, and that he has paid the full price thereof, and that it was so purchased within the period of six months next preceding the date on which it is so delivered.

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

55. The Local Government, subject to the control of the Governor-

Power to make rules relating to sale of stamps General in Council, may make rules consistent herewith for regulating the supply and sale of stamps and stamped papers, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

56. The Governor-General in Council may make rules consistent here-

Power to make rules generally to carry out Act. with to carry out generally the purposes of this Act.

57. All powers to make appointments, rules, and orders conferred by

Certain powers exercisable from time to time. this Act, may be exercised from time to time as occasion requires.

All rules made under this Act, other than rules made under section 55,

Publication of rules. shall be published in the *Gazette of India*, and all rules made under section 55 shall be published in

the local Gazette. All rules published as required by this section shall, upon such publication, have the force of law.

58. Any person receiving any money exceeding twenty rupees in amount,

Obligation to give receipt in certain cases. or any bill of exchange, cheque, or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction of a debt any moveable property exceeding twenty rupees in value, shall, on demand by the person paying or delivering such money, bill, cheque, note, or property, give a duly stamped receipt for the same.

59. Nothing herein contained shall be deemed to affect the duties charge-

Saving as to Court-fees. able under any enactment for the time being in force relating to Court-fees.

60. Every Local Government shall cause this Act to be carefully trans-

Act to be translated, indexed, and sold cheaply. lated into the principal vernacular languages of the territories administered by it. A full alphabet-

ical index shall be added to every such translation, and the translation and index shall be printed and sold to the public at a price not exceeding four annas per copy.

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CHAPTER VIII.

CRIMINAL OFFENCES AND PROCEDURE.

61. Any person drawing, making, issuing, endorsing, or transferring, or signing otherwise than as a witness, or presenting instrument not duly stamped, for acceptance or payment, or accepting, paying, or receiving payment of, or in any manner negotiating any bill of exchange, cheque, or promissory note without the same being duly stamped,

any person executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped, and any person voting or attempting to vote under any proxy not duly stamped, shall, for every such offence, be punished with fine which may extend to five hundred rupees :

Provided that, when any penalty has been paid in respect of any instrument under section 34, section 37, or section 50, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument, upon the person who paid such penalty.

62. Any person required by section 11 to cancel an adhesive stamp, and failing to cancel such stamp in manner prescribed by that section, shall be punished with fine which may extend to one hundred rupees.

Penalty for omission to comply with provisions of section 27.

63. Any person who, with intent to defraud the Government of any duty,

(a) executes any instrument in which all the facts and circumstances required by section 22 to be set forth in such instrument are not fully and truly set forth, or

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances,

shall be punished with fine which may extend to five thousand rupees.

64. Any person who, being required under section 58 to give a receipt, refuses or neglects to give the same, or who, with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered, shall be punished with fine which may extend to one hundred rupees.

Penalty for not making out policy.

65. Every person who—

(a) receives, or takes credit for, any premium or consideration for any contract of insurance, and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such insurance ; or

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(b) makes, executes, or delivers out any policy which is not duly stamped, or making, &c., any policy ed, or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy,

shall be punished with fine which may extend to two hundred rupees.

66. Any person drawing or executing a bill of exchange or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punished with fine which may extend to one thousand rupees.

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

67. Whoever, with intent to defraud the Government of duty, draws, makes, or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made, and whoever, knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays, or receives payment of, such bill or note, or in any manner negotiates the same,

Penalty for post-dating bills, &c. ;

and whoever, with the like intent, practises, or is concerned in, any act, for other devices to defraud the revenue. contrivance, or device not specially provided for by this Act or any other law for the time being in force,

shall be punished with fine which may extend to one thousand rupees.

68. Any person appointed to sell stamps who disobeys any rule made under section 55, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Penalty for breach of rule relating to sale of stamps and for unauthorized sale.

69. No prosecution in respect of any offence punishable under this Act, or the General Stamp Act, 1869, or any Act thereby repealed, shall be instituted without the sanction of the Collector or such other officer as the Local Government generally, or the Collector specially, authorizes in that behalf.

The Chief Controlling Revenue Authority, or any officer authorized by it in this behalf, may stay any such prosecution or compound any such offence.

70. No Magistrate other than a Presidency Magistrate and a Magistrate whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act.

Jurisdiction of Magistrates.

71. Every such offence committed in respect of any instrument may be tried in any district or presidency-town in which such instrument is found, as well as in any district or presidency-town in which such offence might be tried under the law relating to criminal procedure for the time being in force.

Place of trial.

72. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act, or the rules made under it:

Operation of other laws not barred.

Provided that no person shall be punished twice for the same offence.

SCHEDULE I.

STAMP-DUTY ON INSTRUMENTS.

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>1. ACKNOWLEDGMENT of a debt exceeding twenty rupees in amount or value, written or signed by or on behalf of a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper, when such book or paper is left in the creditor's possession</p>	<p>One anna.</p>
<p>2. ADMINISTRATION-BOND</p> <p>ADOPTION-DEED... See <i>Instrument</i>, No. 38.</p>	<p>The same duty as a Security-Bond (No. 14).</p>
<p>3. AFFIDAVIT or declaration in writing on oath or affirmation made before a person authorized by law to administer an oath</p> <p>See <i>Exemptions</i>, Schedule II. (No. 1).</p>	<p>One rupee.</p>
<p>4. AGREEMENT TO LEASE</p> <p>(a.) If relating to the sale of any Government security, share in a Company or Association, or Bill of Exchange</p> <p>(b.) Whereby the owner or occupier of land in a village in the Bombay Presidency agrees to relinquish his rights therein to the Government, and to accept rights in other land in exchange for the right so relinquished</p> <p>(c.) If not otherwise provided for by this Act</p> <p>5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT</p> <p>See <i>Exemptions</i>, Schedule II. (No. 2).</p>	<p>The same duty as a Lease (No. 39).</p> <p>One anna.</p> <p>Four annas.</p> <p>Eight annas.</p>

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
6. APPOINTMENT , in execution of a power, whether of trustees or of property moveable or immoveable, where made by any writing not being a Will	Fifteen rupees.
7. APPRAISEMENT or valuation made otherwise than under an order of the Court in the course of a suit	The same duty as an Award (No. 10).
See <i>Exemptions</i> , Schedule II. (Nos. 3 & 4).	
APPRENTICESHIP-DEED See <i>Instrument</i> , No. 31.	
8. ARTICLES OF ASSOCIATION OF A COMPANY	Twenty-five rupees.
9. ARTICLES OF CLERKSHIP or contract, whereby any person first becomes bound to serve as a clerk in order to his admission as an Attorney in any High Court	Two hundred and fifty rupees.
ASSIGNMENT ... See <i>Conveyance</i> , No. 21, and <i>Transfer</i> , No. 60.	
AUTHORITY TO ADOPT See <i>Instrument</i> , No. 38.	
10. AWARD , that is to say, any decision in writing by an arbitrator or umpire on a reference made otherwise than by an order of the Court in the course of a suit	(a.) Where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1,000 ... The same duty as a Bond (No. 13) for such amount. (b.) In any other case ... Five rupees.

See *Exemption*, Schedule II. (No. 6).

The same duty as a Bond
(No. 13) for the amount
of such bill or note.

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
12. BILL OF LADING ...	Four annas.
See <i>Exemption</i> , Schedule II. (No. 7).	If a Bill of Lading is drawn in parts, the proper stamp therefor must be borne by each one of the set.
{ When the amount or value secured does not exceed ...	R .10 Two annas.
13. BOND (not otherwise provided for by this Act)	{ When such amount or value exceeds Rs. 10, but does not exceed ... 50 Four annas.
See <i>Administration-Bond</i> (No. 2), <i>Customs-Bond</i> (No. 24), <i>Indemnity-Bond</i> (No. 28), <i>Security-Bond</i> (No. 14).	{ When such amount or value exceeds Rs. 50, but does not exceed ... 100 Eight annas.
See <i>Exemptions</i> , Schedule II. (No. 8).	{ and for every Rs. 100 or part thereof in excess of Rs. 100 up to ... 1,000 Eight annas.
14. BOND OR MORTGAGE-DEED executed by way of security for the due execution of an office, or to account for money received by virtue thereof ...	{ and for every Rs. 500 or part thereof in excess of ... 1,000 Two rupees eight annas.
	{ (a.) When the amount secured does not exceed ... 1,000 The same duty as a Bond (No. 13).
	{ (b.) In any other case Five rupees.
See <i>Exemptions</i> , Schedule II. (Nos. 8 and 12).	
15. BOTTOMRY-BOND , that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage ..	The same duty as a Bond (No. 13).

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>16. CERTIFICATE OF SALE granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue-officer</p>	<p>The same duty as a Conveyance (No. 21 for a consideration equal to the amount of the purchase-money.</p>
<p>17. CERTIFICATE OR OTHER DOCUMENT evidencing the right or title of the holder thereof, or any other person, either to any shares, scrip, or stock in or of any Company or Association, or to become proprietor of shares, scrip, or stock in or of any Company or Association</p>	<p>One anna.</p>
<p>18. CHARTER-PARTY, that is to say, any instrument (except an agreement for the hire of a tug-steamer) whereby a vessel or some specified principal part thereof is let for the specified purposes of the character</p>	<p>One rupee.</p>
<p>19. CHEQUE, for an amount exceeding twenty rupees</p>	<p>One anna.</p>
<p>20. COMPOSITION-DEED, that is to say, any instrument executed by a debtor, whereby he conveys his property for the benefit of his creditors,</p>	

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of license, for the benefit of his creditors </p>	Ten rupees.
<p>21. CONVEYANCE, not being a TRANSFER mentioned in No. 60.</p>	<p>(When the amount of the consideration for such conveyance as set forth therein does not exceed Rs. 50 Eight annas.</p> <p>When it exceeds Rs. 50, but does not exceed 100 One rupee.</p>
<p>See <i>Exemptions</i>, Schedule II. (Nos. 5 and 17).</p>	<p>For every Rs. 100 or part thereof in excess of Rs. 100 up to 1,000 One rupee.</p> <p>and for every Rs. 500 or part thereof in excess of ... 1,000 Five rupees.</p>
CO-PARTNERSHIP	See <i>Instrument</i> , No. 32.
<p>22. COPY OR EXTRACT, certified to be a true copy or extract, by or by order of any public officer, and not chargeable under the law for the time being in force relating to Court-fees </p>	<p>(a.) If the original was not chargeable with duty, or if the duty with which it was chargeable does not exceed one rupee ... Eight annas.</p> <p>(b.) In any other case ... One rupee.</p>
<p>See <i>Exemptions</i>, Schedule II. (Nos. 9 and 10).</p>	

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
23. COUNTERPART OR DUPLICATE of any instrument chargeable with duty, and in respect of which the proper duty has been paid	(a.) If the duty with which the original instrument is chargeable does not exceed one rupee. (b.) In any other case ... One rupee.
24. CUSTOMS-BOND ...	The same duty as a Security-bond (No. 14).
25. DECLARATION OF ANY TRUST of or concerning any property, when made by any writing not being a Will	Fifteen rupees.
26. DELIVERY-ORDER IN RESPECT OF GOODS, that is to say, any instrument entitling any person therein named, or his assigns, or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees	One anna.
DEPOSIT OF TITLE-DEEDS	See <i>Instrument</i> , No. 29.
DISSOLUTION OF PARTNERSHIP ...	See <i>Instrument</i> , No. 33.
DUPLICATE	See <i>Counterpart</i> , No. 23.

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
27. ENTRY AS AN ADVOCATE, VAKIL, OR ATTORNEY ON THE ROLL OF ANY HIGH COURT in exercise of powers conferred on such Court by Letters Patent, "or by the Legal Practitioners' Act, 1884."*	<div>In the case of an Advocate or Vakil Five hundred rupees.</div> <div>In the case of an Attorney Two hundred and fifty rupees.</div>
See <i>Exemptions</i> , Schedule II. (No. 11).	
EXCHANGE ... See <i>Instrument</i> , No. 35.	
EXTRACT ... See <i>Copy</i> , No. 22.	
FURTHER CHARGE See <i>Instrument</i> , No. 30.	
GIFT ... See <i>Instrument</i> , No. 36.	
28. INDEMNITY-BOND	The same duty as a Security Bond (No. 14).
INSPECTORSHIP-	
DEED ... See <i>Composition-deed</i> , No. 20.	
29. INSTRUMENT EVIDENCING AN AGREEMENT TO SECURE THE REPAYMENT OF A LOAN made upon the deposit of title-deeds or other valuable security, or upon the hypothecation of moveable property ...	<div>(a.) When such loan is repayable more than three months, but not more than one year, from the date of such instrument. The same duty as a Bill of Exchange (No. 11 (b)) for the amount secured.</div> <div>(b.) When such loan is repayable not more than three months from the date of such instrument. Half the duty payable on a Bill of Exchange (No. 11 (b)) for the amount secured.</div>
30. INSTRUMENT IMPOSING A FURTHER CHARGE ON MORTGAGED PROPERTY ...	<div>(a.) When the original mortgage is one of the description referred to in No. 44, clause (a), of this schedule. The same duty as a Conveyance (No. 21) for a consideration equal to the amount secured by such instrument.</div> <div>(b.) When such mortgage is one of the description referred to in No. 44, clause (b), of this schedule. The same duty as a Bond (No. 13) for the amount secured by such instrument.</div>

* The words quoted have been added by Act IX. of 1884, s. 10.

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>31. INSTRUMENT OF APPRENTICESHIP, including every writing relating to the service or tuition of any apprentice, clerk, or servant, placed with any master to learn any profession, trade, or employment, except articles of clerkship (No. 9 of this schedule) ...</p>	<p>Five rupees.</p>
<p>See <i>Exemption</i>, Schedule II. (No. 12 (c)).</p>	
<p>32. INSTRUMENT OF CO-PARTNERSHIP ...</p>	<p>Ten rupees.</p>
<p>33. INSTRUMENT OF DISSOLUTION OF PARTNERSHIP ...</p>	<p>Five rupees.</p>
<p>34. INSTRUMENT OF DIVORCE, that is to say, any instrument by which any person effects the dissolution of his marriage ...</p>	<p>One rupee.</p>
<p>35. INSTRUMENT OF EXCHANGE of any property ...</p>	<p>The same duty as a Conveyance (No. 21) for a consideration equal to the value of the property of greater value as set forth in such instrument.</p>
<p>36. INSTRUMENT OF GIFT (OTHER THAN A SETTLEMENT OR WILL)...</p>	<p>The same duty as a Conveyance (No. 21) for a consideration equal to the value of the property as set forth in such instrument.</p>

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
37. INSTRUMENT OF PARTITION	The same duty as a Bond (No. 13) for the amount of the value of the property divided as set forth in such instrument.
38. INSTRUMENT (OTHER THAN A WILL.) CONFERRING OR PURPORTING TO CONFER AN AUTHORITY TO ADOPT ... INSURANCE.	Ten rupees.
See <i>Policy, No. 49.</i>	
(a.) Where by such lease the rent is fixed and no premium is paid or delivered and such lease purports to be for a term—	
of less than one year ...	The same duty as a Bond (No. 13) for the whole amount payable or deliverable under such lease.
of not less than one year, but not more than three years • ...	The same duty as a Bond (No. 13) for the average annual rent reserved.
39. LEASE. See <i>Agreement to lease</i> (No. 4). See <i>Exemptions, Schedule II.</i> (No. 13).	
exceeding three years.	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of the average annual rent reserved.
(b.) Where by such lease the rent is fixed and no premium is paid or delivered, and such lease does not purport to be for any definite term ...	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
(c.) Where the lease is granted for a fine or premium, and where no rent is reserved	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of such fine or premium as set forth in the lease.
39. LEASE—(contd.).	
See <i>Agreement to lease</i> (No. 4).	
See <i>Exemptions</i> , Schedule II. (No. 13.)	
(d.) Where the lease is granted for a fine or premium in addition to rent reserved ...	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of such fine or premium as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium had been paid or delivered :
	Provided that when an agreement to lease is stamped with the <i>ad valorem</i> stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas.
40. LETTER OF ALLOTMENT OF SHARES in any Company or proposed Company, or in respect of any loan to be raised by any Company or proposed Company	One anna.
41. LETTER OF CREDIT, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn	One anna.

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>42. LETTER OF LI- CENSE, that is to say, any agreement be- tween a debtor and his creditors that the latter shall, for a spe- cified time, suspend their claims, and allow the debtor to carry on business at his own discretion</p>	Ten rupees.
<p>43. MEMORANDUM OF ASSOCIATION OF A COMPANY ...</p>	Fifteen rupees.
<p>44. MORTGAGE-DEED not provided for by No. 14, No. 15, No. , 29, or No. 55 of this { schedule</p>	<p>(a.) When at the time of execution possession of the property or any part of the pro- perty comprised in such deed is given by the mortgagor or agreed to be given. The same duty as a Convey- ance (No. 21) for a con- sideration equal to the amount secured by such deed.</p>
<p>See Exemptions, Schedule II. (No. 12 and No. 14 (b)).</p>	<p>(b.) When at the time of execution possession is not given or agreed to be given as afore- said. The same duty as a Bond (No. 13) for the amount secured by such deed.</p>
<p>45. NOTARIAL ACT, that is to say, any instrument, endorse- ment, note, attesta- tion, certificate, or entry made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public ...</p>	One rupee.
<p>46. NOTE OR MEMO- RANDUM, sent by a Broker or Agent to his principal, intimat- ing the purchase or</p>	

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.				PROPER STAMP-DUTY.	
sale on account of such principal of any goods, stock, or marketable security exceeding in value twenty rupees				One anna.	
47. NOTE OF PROTEST BY THE MASTER OF A SHIP				Eight annas.	
PARTITION ... See <i>Instrument</i> , No. 37.					
PARTNERSHIP ... See <i>Instrument</i> , Nos. 32 and 33.					
48. PETITION FOR LEAVE TO FILE A SPECIFICATION OF AN INVENTION, or for the extension of the term of the exclusive privilege of making or using or selling such invention in India				One hundred rupees.	
				If drawn singly.	If drawn in duplicate, for each part.
				Rs. A. P.	Rs. A. P.
(a.) In the case of Sea-insurance—					
When the amount insured does not exceed ... Rs. 1,000				0 4 0	0 2 0
And for every further sum of Rs. 1,000 or part thereof in excess of ... 1,000				0 4 0	0 2 0
49. POLICY OF INSURANCE ... See <i>Exemption</i> , Schedule II. (No. 14 (a)).					
(b.) In the case of any other insurance—					
When the amount insured does not exceed ... 1,000				0 6 0	0 3 0
And for every further sum of Rs. 1,000 or part thereof in excess of ... 1,000				0 6 0	0 3 0

STAMP.

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
(a.) When executed for the sole purpose of procuring the presentation of one or more documents for registration in relation to a single transaction	Eight annas.
(b.) When authorizing one person or more to act in a single transaction other than that mentioned in (a) ...	One rupee.
50. POWER-OF-ATTORNEY, not being a proxy chargeable under No. 51.	(c.) When authorizing not more than five persons to act jointly and severally in more than one transaction or generally Five rupees.
	(d.) When authorizing more than five but not more than ten persons to act jointly and severally in more than one transaction or generally ... Ten rupees.
	(e.) In any other case ... One rupee for each person authorized.

Explanation.—For the purposes of this number more persons than one, when belonging to the same firm, shall be deemed to be one person.

PROMISSORY NOTE See *Bill of Exchange*, No 11.

PROTEST, that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note ... See *Notarial Act*, No. 45.

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>PROTEST BY THE MASTER OF A SHIP, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such ...</p>	<p>See <i>Notarial Act</i>, No. 45.</p>
<p>51. PROXY empowering any person to vote at any one meeting of—</p> <p>(a.) Members of a Company whose stock or funds is or are divided into shares and transferable :</p> <p>(b.) Municipal Commissioners :</p> <p>(c.) Proprietors, Members, or Contributors to the funds of any Institution ...</p>	<p>One anna.</p>
<p>52. RECEIPT FOR ANY MONEY OR OTHER PROPERTY THE AMOUNT OR VALUE OF WHICH EXCEEDS TWENTY RUPEES</p>	<p>One anna.</p>

See *Exemptions*, Schedule II. (No. 15).

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
53. RE-CONVEYANCE OF MORTGAGED PROPERTY ...	<div> <div>(a.) If the consideration for which the property was mortgaged does not exceed ... Rs. 1,000</div> <div>The same duty as a Conveyance (No. 21) for the amount of such consideration as set forth in the re-conveyance.</div> </div> <div> <div>(b.) In any other case</div> <div>Ten rupees.</div> </div>
54. RELEASE, that is to say, any instrument whereby a person renounces a claim upon another person or against any specified property ...	<div> <div>(a.) If the amount or value of the claim does not exceed ... 1,000</div> <div>The same duty as a Bond (No. 13) for such amount or value as set forth in the release.</div> </div> <div> <div>(b.) In any other case</div> <div>Five rupees.</div> </div>
55. RESPONDENTIA-BOND, that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination ...	The same duty as a Bond (No. 13).
56. REVOCATION OF ANY TRUST of or concerning any property by any instrument other than a Will ...	Ten rupees.
57. SETTLEMENT ...	The same duty as a Bond (No. 13) for a sum equal to the amount or value of the property settled as set forth in such settlement.

SCHEDULE I.—(continued).

STAMP-DUTY ON INSTRUMENTS—(continued).

(See section 5.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP DUTY.
58. SHIPPING-ORDER for or relating to the conveyance of goods on board of any vessel	One anna.
SPECIFICATION ... See <i>Petition</i> , No. 48.	
59. SURRENDER OF LEASE ...	<p>(a.) When the duty with which the lease is chargeable does not exceed five rupees... The duty with which such lease is chargeable.</p> <p>(b.) In any other case ... Five rupees.</p> <p>(a.) Of shares in a Company or Association. One-quarter of the duty payable on a Conveyance (No. 21).</p> <p>(b.) Of any interest secured by a Bond, Lease, Mortgage-deed, or Policy of Insurance—</p> <p>1. If the duty on such Bond, Lease, Mortgage-deed, or Policy does not exceed five rupees ... The duty with which such Bond, Lease, Mortgage-deed, or Policy of Insurance is chargeable.</p> <p>2. In any other case ... Five rupees.</p> <p>(c.) Of any property under the Administrator-General's Act, 1874, section 31 ... Ten rupees.</p> <p>(d.) Of any trust-property from one trustee to another trustee without consideration ... Five rupees.</p>
60. TRANSFER See <i>Exemptions</i> , Schedule II. (No. 17).	
TRUST See <i>Declaration</i> , No. 25. <i>Revocation</i> , No. 56.	

SCHEDULE I.—(*concluded*).STAMP-DUTY ON INSTRUMENTS—(*concluded*).(*See section 5.*)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>VALUATION ... See <i>Appraisement, No. 7.</i></p> <p>61. WARRANT FOR GOODS, that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse, or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be ...</p>	<p>Four annas.</p>

SCHEDULE II.

INSTRUMENTS EXEMPTED FROM STAMP-DUTY.

1. Affidavit or declaration in writing when made—
 - (a) as a condition of enlistment under the Indian Articles of War ;
 - (b) for the immediate purpose of being filed or used in any Court or before the officer of any Court ; or
 - (c) for the sole purpose of enabling any person to receive any pension or charitable allowance.
2. Agreement or memorandum of agreement—
 - (a) for or relating to the sale of goods or merchandise exclusively, not being a note or memorandum chargeable under No. 46 of Schedule I. ;
 - (b) for service in British Burma under the Chief Commissioner of that Province entered into between Natives of India emigrating to British Burma and the Superintendent of State Emigration or other Government officer acting as representative of the said Chief Commissioner ;
 - (c) made by raiyats for the cultivation of the poppy for Government ;
 - (d) made in the form of tenders to the Government of India for or relating to any loan ;
 - (e) made regarding the occupancy of land denoted by a survey-number, and the payment of revenue therefor, under Bombay Act I. of 1865 ;
 - (f) made under the European Vagrancy Act, 1874, section 17.
3. Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.
4. Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.
5. Assignment of copyright by entry made under Act No. XX. of 1847, section 5.
6. Award under Bombay Act VI. of 1873, section 81, or Bombay Act III. of 1874, section 18.
7. Bill of lading, when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act, 1875, and are to be delivered at another place within the limits of the same port.
8. Bond when executed by—
 - (a) the sureties of middlemen (lambardárs or khattadárs) taking advances for the cultivation of the poppy for Government ;
 - (b) headmen nominated under rules framed in accordance with Bengal Act III. of 1876, section 99, for the due performance of their duties under that Act ;
 - (c) any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.
9. Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.

SCHEDULE II.—(continued).

INSTRUMENTS EXEMPTED FROM STAMP-DUTY— (continued).

10. Copy of registration of emigrants furnished under section 27 or section 29 of the Indian Emigration Act, 1871.
11. Entry—
 - (a) of an advocate, vakil, or attorney, on the roll of any High Court when he has previously been enrolled in a High Court ;*
 - (b) on the roll of any High Court, as an attorney, of an article clerk bound as such before this Act comes into force.
12. Instruments—
 - (a) executed by persons taking advances under the Land Improvement Act, 1871, or by their sureties, as security for the repayment of such advances ;
 - (b) executed by officers of Government or their sureties to secure the due execution of an office or the due accounting for money received by virtue thereof ;
 - (c) of apprenticeship executed by a Magistrate under Act XIX. of 1850, or by which a person is apprenticed by or at the charge of any public charity.
13. Leases and Counterparts—
 - (a) Leases of fisheries granted under the Burma Fisheries Act, 1875 ;
 - (b) Lease, executed in the case of a cultivator without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the annual rent reserved does not exceed one hundred rupees ;
 - (c) Counterpart of any lease granted to a cultivator.
14. Letter—
 - (a) of cover or engagement to issue a policy of insurance :
 Provided that, unless such letter or engagement bear the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose except to compel the delivery of the policy therein mentioned ;
 - (b) of hypothecation accompanying a bill of exchange.
15. Receipt—
 - (a) endorsed on or contained in any instrument duly stamped, or exempted under this schedule, No. 18, acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal-money, interest, or annuity, or other periodical payment thereby secured ;
 - (b) for any payment of money without consideration ;
 - (c) for any payment of rent by a cultivator on account of land assessed to Government revenue, or (in the Presidencies of Fort St. George and Bombay) of inam lands ;
 - (d) for pay by non-commissioned officers or soldiers of Her Majesty's Army, or Her Majesty's Indian Army, when serving in such capacity ;

* The words, "established by Royal Charter," have been repealed by Act IX. of 1884,
 10.

SCHEDULE II.—(*concluded*).INSTRUMENT EXEMPTED FROM STAMP-DUTY—(*concluded*).

(e) for pensions or allowances by persons receiving such pensions or allowances in respect of their service as such non-commissioned officers or soldiers, and not serving the Government in any other capacity ;

(f) given by holders of family-certificates in cases where the person from whose pay or allowances the sum comprised in the receipt has been assigned is a non-commissioned officer or soldier of either of the said Armies, and serving in such capacity ;

(g) given by a headman or lambardár for land-revenue or taxes collected by him ;

(h) given for money or securities for money deposited in the hands of any banker, to be accounted for :

Provided the same be not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for :

Provided also, that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of or in any Company or Association, or proposed or intended Company or Association.

16. Surrender of lease when such lease is exempted from duty.

17. Transfers by endorsement—

(a) of a bill of exchange, cheque, or promissory note ;

(b) of a bill of lading ;

(c) of a policy of insurance ;

(d) of mortgages of rates and taxes authorized by any Act for the time being in force in British India ;

(e) of securities of the Government of India ;

(f) of a warrant for goods (No. 61 of schedule I.).

General Exemption.

18. Any instrument executed by, or on behalf of, or in favour of, Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument.

SCHEDULE III.

ACTS REPEALED.

Number and year.	Subject or short title.	Extent of repeal.
XX. of 1847	Copyright ...	In section five, the words, "without being subject to any stamp or duty."
X. of 1866	The Indian Companies Act.	In section eleven, the words, "shall bear the same stamp as if it were a deed, and."
		In section sixteen, the words, "they shall bear the same stamp as if they were con- tained in a deed."
XVIII. of 1869 ...	The General Stamp Act ...	The whole.
VII. of 1871 ..	The Indian Emigration Act	In sections twenty-seven and twenty-nine, the words, "which shall not require a stamp."
XIX. of 1873 ..	The North-Western Pro- vinces Land Revenue Act, 1873. •	In section one hundred and eighty-three, the words "stamped or."
II. of 1874 ..	The Administrator-Gen- eral's Act.	In section thirty-one, the words, "bearing a stamp of ten ru- pees and."
IX. of 1874 ...	The European Vagrancy Act.	In section seventeen, the words, "may be on unstamped paper and."
XV. of 1876 ..	Bombay Municipal Deben- tures.	In section two, the words, "and no such indorsement shall be chargeable with any stamp- duty."

INDIAN SUCCESSION ACT, NO. X. OF 1865.*

RECEIVED THE G.-G.'s ASSENT ON THE 16TH MARCH 1865.

*An Act to amend and define the Law of Intestate and Testamentary Succession
in British India.*

WHEREAS it is expedient to amend and define the rules of law applicable
to Intestate and Testamentary Succession in British
India ; It is enacted as follows :—

Preamble.

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as "The Indian
Succession Act, 1865."

2. Except as provided by this Act or by any other law for the time being
in force, the rules herein contained shall constitute
the law of British India applicable to all cases of
intestate or testamentary succession-†

Act to constitute law of British India in cases of intestate or testamentary succession.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context—

Words importing the singular number include the plural ; words importing the plural number include the singular ; and words importing the male sex include females :

" Person " includes any company or association, or body of persons, whether incorporated or not :

" Year " and " month " respectively mean a year a month reckoned according to the British calendar :

" Immoveable property " includes land, incorporeal tenements, and things attached to the earth, or permanently fastened to anything which is attached to the earth :

" Moveable property " means property of every description except immoveable property :

" Province " includes any division of British India having a Court of the last resort :

" British India " means the territories which are or may become vested in Her Majesty or Her Successors by the Statute 21 & 22 Vic., cap. 106 (*An Act for the better Government of India*), other than the Settlement of Prince of Wales's Island, Singapore, and Malacca :

* As to the exemption of Párisis from portions of the Succession Act, see Act XXI. of 1865, s. 8. As to the application of portions of the Succession Act to the wills of Hindús, Jainas, Sikhs, and Buddhists in the Local Provinces and in the towns of Madras and Bombay, see Act XXI. of 1870.

† See 12 B. L. R. 427.

1865.

Act 10.

"District Judge" means the Judge of a principal Civil Court of original jurisdiction :

"Minor"* means any person who shall not have completed the age of eighteen years, and "minority" means the status of such person :

"Will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death :

"Codicil" means an instrument made in relation to a will, and explaining, altering, or adding to its dispositions. It is considered as forming an additional part of the will.

"Probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator :

"Executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided :

"Administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor :

And in every part of British India to which this Act shall extend, "Local Government" shall mean the person authorized by law to administer executive government in such part ; and

"High Court" shall mean the highest Civil Court of Appeal therein, and, for the purposes of section 242, 242A, 246A, and 277A, shall include the Court of the Recorder of Rangoon.†

4. No person shall, by marriage, acquire any interest in the property of

Interests and powers not the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done if unmarried.‡

PART II.

OF DOMICILE.

Law regulating succession to deceased person's immoveable and moveable property respectively.

5. Succession to the immoveable property in British India of a person deceased is regulated by the law of British India, wherever he may have had his domicile at the time of his death.

Succession to the moveable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death.

Illustrations.

(a.) A, having his domicile in British India, dies in France, leaving moveable property in France, moveable property in England, and property, both moveable and immoveable, in British India. The succession to the whole is regulated by the law of British India.

(b.) A, an Englishman, having his domicile in France, dies in British India, and leaves property, both moveable and immoveable, in British India. The succession to the moveable property is regulated by the rules which govern, in France, the succession to the moveable property of an Englishman dying domiciled in France, and the succession to the immoveable property is regulated by the law of British India.

* See 1 B. L. R., O. C. J., 13 ; Act IX. of 1875, s. 3.

† See Act XIII. of 1875, s. 1.

‡ See 8 B. L. R. 372. "This section shall not apply, and shall be deemed never to have applied, to any marriage, one or both of the parties to which professed, at the time of the marriage, the Hindû, Muhammadan, Buddhist, Sikh, or Jaina religion."—Act III. of 1874, s. 2, last para.

One domicile only affects succession to moveables.

7. The domicile of origin of every person of legitimate birth is in the country in which, at the time of his birth, his father was domiciled: or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.

6. A person can only have one domicile for the purpose of succession to his moveable property.

1865.
Act 10.

Illustration.

At the time of the birth of A, his father was domiciled in England. A's domicile of origin is in England, whatever may be the country in which he was born.

8. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

Continuance of domicile of origin.

9. The domicile of origin prevails until a new domicile has been acquired.

10. A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

Explanation.—A man is not to be considered as having taken up his fixed habitation in British India merely by reason of his residing there in Her Majesty's civil or military service, or in the exercise of any profession or calling.

Illustrations.

(a.) A, whose domicile of origin is in England, proceeds to British India, where he settles as a barrister or a merchant, intending to reside there during the remainder of his life. His domicile is now in British India.

(b.) A, whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service. A has acquired a domicile in Austria.

(c.) A, whose domicile of origin is in France, comes to reside in British India under an engagement with the British Indian Government for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in British India.

(d.) A, whose domicile is in England, goes to reside in British India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not, by such residence, acquire a domicile in British India, however long the residence may last.

(e.) A, having gone to reside in British India under the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in British India. A has acquired a domicile in British India.

(f.) A, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not, by such residence, acquire a domicile in British India.

(g.) A, having come to Calcutta under the circumstances stated in the last preceding illustration, continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. A has acquired a domicile in British India.

11. Any person may acquire a domicile in British India by making Special mode of acquiring domicile in British India. and depositing in some office in British India (to be fixed by the Local Government)* a declaration

* See, as to Oudh, *Gazette of India*, 15th July 1865 p. 813; as to British Burma, *ibid*, 29th July 1865, p. 845.

1865. in writing under his hand of his desire to acquire such domicile, provided
Act 10. that he shall have been resident in British India for one year immediately preceding the time of his making such declaration.

12. A person who is appointed by the Government of one country to be its ambassador, consul, or other representative in another country, does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with him as part of his family or as a servant.

Domicile not acquired by residence as representative of foreign Government, or as part of his family.

13. A new domicile continues until the former domicile has been resumed, or another has been acquired.

Continuance of new domicile.

14. The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

Exception.—The domicile of a minor does not change with that of his parent, if the minor is married, or holds any office or employment in the service of Her Majesty, or has set up, with the consent of the parent, in any distinct business.

Minor's domicile.

15. By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

Domicile acquired by woman on marriage.

16. The wife's domicile during the marriage follows the domicile of her husband.

Exception.—The wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

Wife's domicile during marriage.

17. Except in the cases above provided for, a person cannot, during minority, acquire a new domicile.

18. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

Minor's acquisition of new domicile.

19. If a man dies leaving moveable property in British India, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of British India.

Succession to moveable property in British India, in absence of proof of domicile elsewhere.

PART III.

OF CONSANGUINITY.

20. Kindred or consanguinity is the connexion or relation of persons descended from the same stock or common ancestor.

Kindred or consanguinity.

21. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather, and great-grandfather, and so upwards in the direct ascending line; or between a man, his son, grandson, great-grandson, and so downwards in the direct descending line.

Lineal consanguinity.

Every generation constitutes a degree, either ascending or descending.

A man's father is related to him in the first degree, and so likewise is his son ; his grandfather and grandson in the second degree ; his great-grandfather and great-grandson in the third.

22. Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other.

For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased to the common stock, and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

23. For the purpose of succession, there is no distinction between those persons held for purpose of succession to be similarly related to deceased. who are related to a person deceased through his father, and those who are related to him through his mother ; nor between those who are related to him by the full blood, and those who are related to him by the half blood ; nor between those who were actually born in his life-time, and those who, at the date of his death, were only conceived in the womb, but who have been subsequently born alive.

Mode of computing degrees of kindred.

24. In the annexed table of kindred, the degrees are computed as far as the sixth, and are marked by numeral figures.

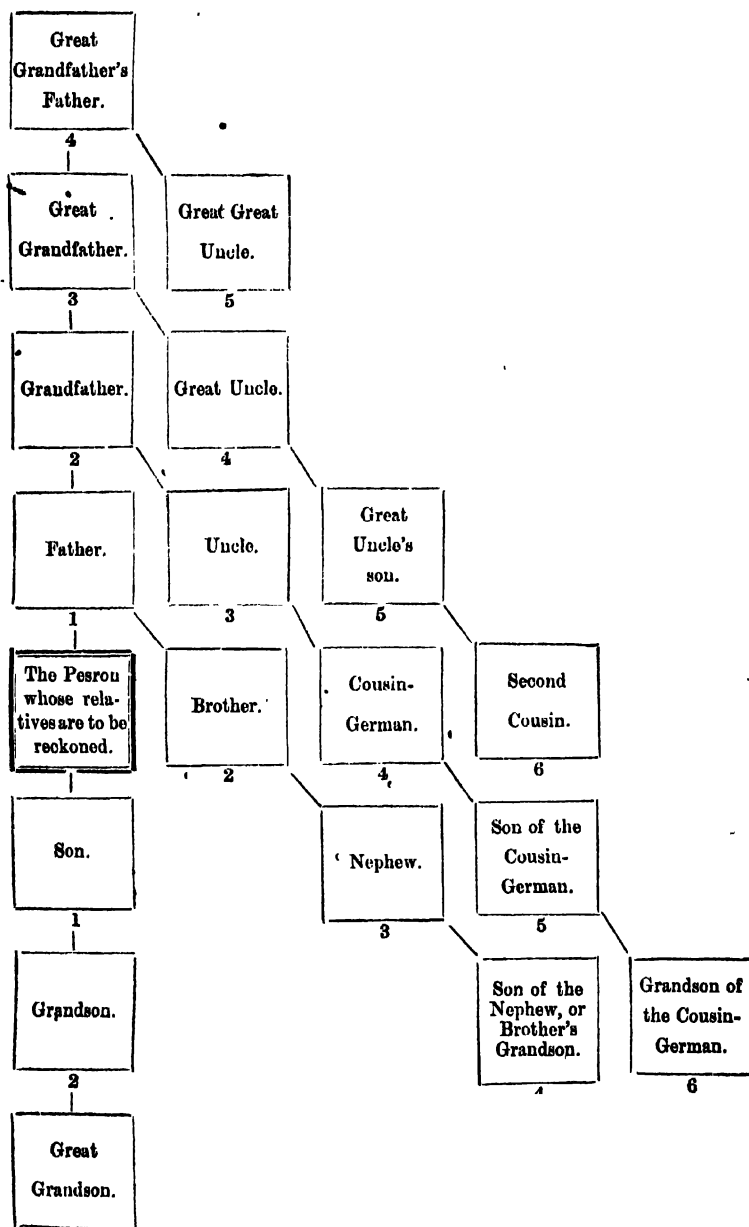
The person whose relatives are to be reckoned, and his cousin-german or first cousin, are, as shown in the table, related in the fourth degree ; there being one degree of ascent to the father, and another to the common ancestor, the grandfather ; and from him one of descent to the uncle, and another to the cousin-german ; making in all four degrees.

A grandson of the brother and a son of the uncle, i. e., a great-nephew and a cousin-german, are in equal degree, being each four degrees removed.

A grandson of a cousin-german is in the same degree as the grandson of a great-uncle, for they are both in the sixth degree of kindred.

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TABLE OF CONSANGUINITY.



PART IV.

OF INTESTACY.

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As to what property deceased considered to have died intestate.

25. A man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

Illustrations.

(a.) A has left no will. He has died intestate in respect of the whole of his property.

(b.) A has left a will, whereby he has appointed B his executor; but the will contains no other provisions. A has died intestate in respect of the distribution of his property.

(c.) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

(d.) A has bequeathed 1,000*l.* to B, and 1,000*l.* to the eldest son of C, and has made no other bequest; and has died leaving the sum of 2,000*l.* and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of 1,000*l.*

26. Such property devolves upon the wife or husband, or upon those Devolution of such pro- who are of the kindred of the deceased, in the perty. order and according to the rules herein prescribed.

Explanation.—The widow is not entitled to the provision hereby made for her, if by a valid contract made before her marriage she has been excluded from the distributive share of her husband's estate.

27. Where the intestate has left a widow, if he has also left any lineal Where intestate has left widow and lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules herein contained.

If he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are of kindred to him, in the order and according to the rules herein contained.

If he has left none who are of kindred to him, the whole of his property shall belong to his widow.

28. Where the intestate has left no widow, his property shall go to his Where intestate has left no widow, and where he has left no kindred. lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules herein contained; and if he has left none who are of kindred to him, it shall go to the Crown.

PART V.

OF THE DISTRIBUTION OF AN INTESTATE'S PROPERTY.

(a.) *When he has left lineal descendants.*

29. The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) Rules of distribution. amongst his lineal descendants are as follows:—

30. Where the intestate has left surviving him a child or children, but no more remote lineal descendants through a deceased child, the property shall belong to his surviving child, if there be only one, or shall be equally divided among all his surviving children.

1865. **31.** Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren, and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild, if there be only one, or shall be equally divided among all his surviving grandchildren.

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Where intestate has left no child, but grandchild or grandchildren.

Illustrations.

(a.) A has three children, and no more; John, Mary, and Henry. They all die before the father, John leaving two children, Mary three, and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any deceased grandchild. Each of his grandchildren shall have one-ninth.

(b.) But if Henry has died leaving no child, then the whole is equally divided between the intestate's five grandchildren, the children of John and Mary.

(c.) A has two children, and no more; John and Mary. John dies before his father, leaving his wife pregnant. Then A dies, leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and such posthumous child.

- 32.** In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree.

Where intestate has left only great-grandchildren or remoter lineal descendants.

- 33.** If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him leaving lineal descendants who survived him; and one of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and

one of such shares shall be allotted in respect of each of such deceased lineal descendants; and

the share allotted in respect of each of such deceased lineal descendants shall belong to the surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

Illustrations.

(a.) A had three children, John, Mary, and Henry; John died leaving four children, and Mary died leaving one, and Henry alone survived the father. On the death of A intestate, one-third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.

(b.) A left no child, but left eight grandchildren, and two children of a deceased grandchild. The property is divided into nine parts, one of which is allotted to each grandchild; and the remaining one-ninth is equally divided between the two great-grandchildren.

(c.) A has three children, John, Mary, and Henry. John dies leaving four children, and one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies intestate. One-third of his property is allotted to Henry; one-third to Mary's child; and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

(b.) *Where the Intestate has left no lineal Descendants.*

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34. Where an intestate has left no lineal descendants, the rules for the **Act 10.**

Rules of distribution where intestate has left no lineal descendants.

distribution of his property (after deducting the widow's share, if he has left a widow) are as follows:—

Where intestate's father living.

35. If the intestate's father be living, he shall succeed to the property.

36. If the intestate's father is dead, but the intestate's mother is living,

Where intestate's father dead, but his mother, brothers, and sisters living

and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each

living brother or sister shall succeed to the property in equal shares.

Illustration.

A dies intestate, survived by his mother and two brothers of the full blood, John and Henry, and a sister Mary, who is the daughter of his mother, but not of his father. The mother takes one-fourth, each brother takes one-fourth, and Mary, the sister of half-blood, takes one-fourth.

37. If the intestate's father is dead, but the intestate's mother is living,

Where intestate's father dead, and his mother, a brother or sister, and children of any deceased brother or sister, living.

and if any brother or sister, and the child or children of any brother or sister who may have died in the intestate's lifetime, are also living, then the mother and each living brother or sister, and the living child or children of each deceased

brother or sister, shall be entitled to the property in equal shares, such children if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Illustration.

A, the intestate, leaves his mother, his brothers John and Henry, and also one child of a deceased sister Mary, and two children of George, a deceased brother of the half blood, who was the son of his father, but not of his mother. The mother takes one-fifth, John and Henry each take one-fifth, the child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth equally between them.

38. If the intestate's father is dead, but the intestate's mother is living,

Where intestate's father dead, and his mother and children of any deceased brother or sister living.

and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to

the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Illustration.

A, the intestate, leaves no brother or sister, but leaves his mother and one child of a deceased sister Mary, and two children of a deceased brother George. The mother takes one-third, the child of Mary takes one-third, and the children of George divide the remaining one-third equally between them.

39. If the intestate's father is dead, but the

Where intestate's father dead, but his mother living, and no brother, nor sister, nor nephew.

intestate's mother is living, and there is neither brother, nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

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40. Where the intestate has left neither lineal descendant, nor father, nor mother, the property is divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

41. If the intestate left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

Where intestate has left neither lineal descendant, nor parent, nor brother, nor sister.

Illustrations.

(a.) A, the intestate, has left a grandfather and a grandmother, and no other relative standing in the same or a nearer degree of kindred to him. They, being in the second degree, will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree.

(b.) A, the intestate, has left a great-grandfather, or great-grandmother, and uncles and aunts, and no other relative standing in the same or a nearer degree of kindred to him. All of these, being in the third degree, shall take equal shares.

(c.) A, the intestate, left a great-grandfather, an uncle, and a nephew, but no relative standing in a nearer degree of kindred to him. All of these, being in the third degree, shall take equal shares.

(d.) Ten children of one brother or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They shall each take one-eleventh of the property.

42. Where a distributive share in the property of a person who has died intestate shall be claimed by a child, or any descendant of a child, of such person, no money, or other property which the intestate may, during his life, have paid, given, or settled to, or for the advancement of, the child by whom or by whose descendant the claim is made, shall be taken into account in estimating such distributive share.

Children's advancements not brought into hotchpot.

PAKT VI.

OF THE EFFECT OF MARRIAGE AND MARRIAGE-SETTLEMENTS ON PROPERTY.

43. The husband surviving his wife has the same rights in respect of her property, if she die intestate, as the widow has in respect of her husband's property, if he die intestate.

Rights of widower and widow respectively.

44. If a person whose domicile is not in British India marries in British India a person whose domicile is in British India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage.

Effect of marriage between person domiciled, and one not domiciled in British India.

45. The property of a minor may be settled in contemplation of marriage, provided the settlement be made by the minor with the approbation of the minor's father, or, if he be dead or absent from British India, with the approbation of the High Court.

Settlement of minor's property in contemplation of marriage.

PART VII.*

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OF WILLS AND CODICILS.

Act 10.

Persons capable of making wills.

46. Every person of sound mind and not a minor may dispose of his property by will.

Explanation 1.—A married woman may dispose of by will any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf, or dumb, or blind, are not hereby incapacitated for making a will if they are able to know what they do by it.

Explanation 3.—One who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation 4.—No person can make a will while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause, that he does not know what he is doing

Illustrations.

(a.) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his will. A cannot make a valid will.

(b.) A executes an instrument purporting to be his will, but he does not understand the nature of the instrument, nor the effect of its provisions. This instrument is not a valid will.

(c.) A, being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes a will. This is a valid will.

Testamentary guardian.

47. A father, whatever his age may be, may, by will, appoint a guardian or guardians for his child during minority.

48. A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Will obtained by fraud, coercion, or importunity.

Illustrations.

(a.) A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act, and thereby induces the testator to make a will in his (A's) favour; such will has been obtained by fraud, and is invalid.

(b.) A by fraud and deception prevails upon the testator to bequeath a legacy to him. The bequest is void.

(c.) A, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment.

(d.) A threatens to shoot B, or to burn his house, or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B in consequence makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(e.) A being of sufficient intellect, if undisturbed by the influence of others to make a will, yet being so much under the control of B that he is not a free agent, makes a will dictated by B. It appears that he would not have executed the will but for fear of B. The will is invalid.

(f.) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a will of a certain purport, and does so merely to purchase peace, and in submission to B. The will is invalid.

* Of this Part, sections 46, 48, and 49, extend to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870.

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Act 10.

(g.) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his will in the manner recommended by B. The will is not rendered invalid by the intercession and persuasion of B.

(h.) A, with a view to obtaining a legacy from B, pays him attention, and flatters him, and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

49. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.
Will may be revoked or altered.

PART VIII.*

OF THE EXECUTION OF UNPRIVILEGED WILLS.

50. Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or a mariner at sea, must execute his will according to the following rules :—
Execution of unprivileged wills.

First.—The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

Second.—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

Third.—The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix the mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person ; and each of the witnesses must sign the will in the presence of the testator,† but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

51. If a testator, in a will or codicil duly attested, refers to any other document than actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the will or codicil in which it is referred to.
Incorporation of papers by reference.

PART IX.

OF PRIVILEGED WILLS.

52. Any soldier being employed in an expedition, or engaged in actual warfare, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a will made, as is mentioned in the fifty-third section.
Privileged will.

Such wills are called privileged wills.

* This Part extends to the wills of Hindus, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870.

† 3 N. W. P. 35.

Illustrations.

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(a.) A, the surgeon of a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged will.

(b.) A is at sea in a merchant-ship, of which he is purser. He is a mariner, and, being at sea, can make a privileged will.

(c.) A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged will.

(d.) A, a mariner of a ship in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner at sea, and can make a privileged will.

(e.) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged will.

(f.) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged will.

Mode of making, and rules for executing, privileged wills. 53. Privileged wills may be in writing, or may be made by word of mouth.

The execution of them shall be governed by the following rules:—

First.—The will may be written wholly by the testator, with his own hand. In such case it need not be signed nor attested.

Second.—It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

Third.—If the instrument purporting to be a will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his will, if it be shown that it was written by the testator's directions, or that he recognized it as his will.

If it appear on the face of the instrument that the execution of it in the manner intended by him was not completed, the instrument shall not, by reason of that circumstance, be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

Fourth.—If the soldier or mariner shall have written instructions for the preparation of his will, but shall have died before it could be prepared and executed, such instructions shall be considered to constitute his will.

Fifth.—If the soldier or mariner shall, in the presence of two witnesses, have given verbal instructions for the preparation of his will, and they shall have been reduced into writing in his lifetime, but he shall have died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence, nor read over to him.

Sixth.—Such soldier or mariner as aforesaid may make a will by word of mouth by declaring his intentions before two witnesses present at the same time.

Seventh.—A will made by word of mouth shall be null at the expiration of one month after the testator shall have ceased to be entitled to make a privileged will.

PART X.

OF THE ATTESTATION, REVOCATION, ALTERATION, AND REVIVAL OF WILLS.

54. A will shall not be considered as insufficiently attested by reason of

Effect of gift to attesting witness. any benefit thereby given, either by way of bequest or by way of appointment, to any person attesting it, or to his or her wife or husband ;

1865. but the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them.

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Explanation.—A legatee under a will does not lose his legacy by attesting a codicil which confirms the will.

55. No person, by reason of interest in, or of his being an executor of, a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.*

Witness not disqualified by interest or by being executor.

56. Every will shall be revoked by the marriage of the maker, except a will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled in case of intestacy.

Revocation of will by testator's marriage.

Explanation.—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

Power of appointment defined.

57. No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged will is heretofore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator or by some person in his presence and by his direction, with the intention of revoking the same.

Revocation of unprivileged will or codicil.

Illustrations.

(a.) A has made an unprivileged will; afterwards A makes another unprivileged will which purports to revoke the first. This is a revocation.

(b.) A has made an unprivileged will. Afterwards, A, being entitled to make a privileged will, makes a privileged will, which purports to revoke his unprivileged will. This is a revocation.

58. No obliteration, interlineation, or other alteration made in any unprivileged will after the execution thereof, shall have any effect, except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as heretofore is required for the execution of the will; save that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

Effect of obliteration, interlineation, or alteration in unprivileged will.

59. A privileged will or codicil may be revoked by the testator, by an unprivileged will or codicil, or by any act expressing an intention to revoke it, and accompanied with such formalities as would be sufficient to give validity to a privileged will, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Revocation of privileged will or codicil.

* This section, and sections 57—60 (both inclusive), extend to the wills of Hindus, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI, of 1870.

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Explanation.—In order to the revocation of a privileged will or codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should, at the time of doing that act, be in a situation which entitles him to make a privileged will.

60. No unprivileged will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same;

and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

PART XI.

OF THE CONSTRUCTION OF WILLS.*

61. It is not necessary that any technical words or terms of art shall be used in a will, but only that the wording shall be such that the intentions of the testator can be known therefrom.

62. For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a Court must enquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

Illustrations.

(a.) A, by his will, bequeaths 1,000 rupees to his eldest son,† or to his youngest grandchild, or to his cousin Mary. A Court may make inquiry in order to ascertain to what person the description in the will applies.

(b.) A, by his will, leaves to B "his estate called Black Acre." It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest; that is to say, what estate of the testator's is called Black Acre.

(c.) A, by his will, leaves to B "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

63. Where the words used in the will to designate or describe a legatee, Misnomer or misdescription of object. or a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.

A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

* Of this Part, sections 61–77 (both inclusive) apply to the wills of Hindus, &c., in the Lower Provinces and in the town of Madras and Bombay.—Act XXI. of 1870.

† See Act XXI. of 1870, s. 6.

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*Illustrations.***Act 10.**

(a.) A bequeaths a legacy "to Thomas, the second son* of his brother John." The testator has an only brother, named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(b.) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother, named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

(c.) The testator bequeaths his property "to A and B, the legitimate children* of C." C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

(d.) The testator gives his residuary estate to be divided among "his seven children,"* and, proceeding to enumerate them, mentions six names only. This omission shall not prevent the seventh child from taking a share with the others.

(e.) The testator, having six grandchildren,* makes a bequest to "his six grandchildren," and, proceeding to mention them by their Christian names, mentions one twice over, omitting another altogether. The one whose name is not mentioned shall take a share with the others.

(f.) The testator bequeaths "1,000 rupees to each of the three children* of A." At the date of the will, A has four children. Each of these four children shall, if he survives the testator, receive a legacy of 1,000 rupees.

64. Where any word material to the full expression of the meaning

When words may be supplied. has been omitted, it may be supplied by the context.

Illustration.

The testator gives a legacy of "five hundred" to his daughter A, and a legacy of "five hundred rupees" to his daughter B. A shall take a legacy of five hundred rupees.

65. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect.

* Rejection of erroneous particulars in description of subject.

Illustrations.

(a.) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, but had no marsh-lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous, and the marsh-lands of the testator lying in L shall pass by the bequest.

(b.) The testator bequeaths to A "his zamindári of Rámpur." He had an estate at Rámpur, but it was a táluq, and not a zamindári. The táluq passes by this bequest.

66. If the will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

When part of description may not be rejected as erroneous.

Explanation.—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under the sixty-fifth section are to be considered as struck out of the will.

Illustrations.

(a.) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest shall be considered as limited to such of the testator's marsh-lands lying in L as were in the occupation of X.

(b.) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X, comprising 1,000 bighās of lands." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The measurement is wholly inapplicable to the marsh-lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the will, and such of the testator's marsh-lands lying in L as were in the occupation of X shall alone pass by the bequest.

67. Where the words of the will are unambiguous, but it is found by

Extrinsic evidence admissible in case of latent ambiguity.

extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show

which of these applications was intended.

Illustrations.

(a.) A man, having two cousins of the name of Mary, bequeaths a sum of money to "his cousin Mary." It appears that there are two persons, each answering the description in the will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(b.) A, by his will, leaves to B "his estate called Sultānpur Khurd." It turns out that he had two estates called Sultānpur Khurd. Evidence is admissible to show which estate was intended.

Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency.

68. Where there is an ambiguity or deficiency on the face of the will, no extrinsic evidence as to the intentions of the testator shall be admitted.

Illustrations.

(a.) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his will he bequeaths 1,000 rupees to "his aunt Caroline" and 1,000 rupees "to his cousin Mary," and afterwards bequeaths 2,000 rupees to "his before-mentioned aunt Mary." There is no person to whom the description given in the will can apply, and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty under seventy-sixth section.

(b.) A bequeaths 1,000 rupees to _____, leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(c.) A bequeaths to B _____ rupees, or "his estate of _____." Evidence is not admissible to show what sum or what estate the testator intended to insert.

69. The meaning of any clause in a will is to be collected from the

Meaning of clause to be collected from entire will.

entire instrument, and all its parts are to be construed with reference to each other; and for this

purpose a codicil is to be considered as part of the will.

Illustrations.

(a.) The testator gives to B a specific fund or property at the death of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B; it appearing from the bequest to B that the testator meant to use, in a restricted sense, the words in which he describes what he gives to A.

(b.) Where a testator, having an estate, one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his will bequeaths Black Acre to B, the latter bequest is to be read as an exception out of the first, as if he had said, "I give Black Acre to B, and all the rest of my estate to A."

- 1865.** **70.** General words may be understood in a restricted sense where it may be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in such wider sense.
- Act 10.** When words may be understood in restricted sense, and when in sense wider than usual.

Illustrations.

(a.) A testator gives to A "his farm in the occupation of B," and to C "all his marsh-lands in L." Part of the farm in the occupation of B consists of marsh-lands in L, and the testator also has other marsh-lands in L. The general words, "all his marsh-lands in L," are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh-lands in L.

(b.) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons, and chest of clothes, and to his friend A (a ship mate) his red box, clasp-knife, and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(c.) A, by his will, bequeathed to B all his household-furniture, plate, linen, china, books, pictures, and all other goods of whatever kind; and afterwards bequeathed to B a specified part of his property. Under the first bequest, B is entitled only to such article of the testator's as are of the same nature with the articles therein enumerated.

- 71.** Where a clause is susceptible of two meanings, according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.
- Which of two possible constructions preferred.

No part rejected if it can be reasonably construed.

72. No part of a will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

- 73.** If the same words occur in different parts of the same will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.
- Interpretation of words repeated in different parts of will.

- 74.** The intention of the testator is not to be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.
- Testator's intention to be effectuated as far as possible.

Illustration.

The testator, by a will made on his death-bed, bequeathed "all his property to C D for life, and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent because the gift to the hospital is void under the hundred and fifth section, but it shall take effect so far as regards the gift to C D.

- 75.** Where two clauses or gifts in a will are irreconcilable so that they cannot possibly stand together, the last shall prevail.
- The last of two inconsistent clauses prevails.

Illustrations.

(a.) The testator, by the first clause of his will, leaves his estate of Rāmānagar "to A," and, by the last clause of his will, leaves it "to B and not to A." B shall have it.

(b.) If a man at the commencement of his will gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition shall prevail.

Will or bequest void for uncertainty.

76. A will or bequest not expressive of any definite intention is void for uncertainty.

Illustration.

If a testator says, "I bequeath goods to A" or, "I bequeath to A;" or, "I leave to A all the goods mentioned in a schedule," and no schedule is found; or, "I bequeath 'money,' 'wheat,' 'oil,' " or the like, without saying how much, this is void.

77. The description, contained in a will, of property, the subject of gift, shall, unless a contrary intention appear by the will, be deemed to refer to and comprise the property answering that description at the death of the testator.

Words describing subject refer to property answering description at testator's death.

78. Unless a contrary intention shall appear by the will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power;

and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power.

79. Where property is bequeathed to or for the benefit of such of certain objects as a specified person shall appoint, or for the benefit of certain objects in such proportions as a specified person shall appoint; and the will does not provide for the event of no appointment being made; if the power given by the will be not exercised, the property belongs to all the objects of the power in equal shares.

Implied gift to objects of power in default of appointment.

Illustration.

A, by his will, bequeaths a fund to his wife for her life, and directs that at her death it shall be divided among his children in such proportions as she shall appoint. The widow dies without having made any appointment. The fund shall be divided equally among the children.

80. Where a bequest is made to the "heirs," or "right heirs," or "relations," or "nearest relations," or "family," or "kindred," or "nearest of kin," or "next-of-kin," of a particular person, without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property.

Bequest to "heirs," &c., of particular person without qualifying terms.

Illustrations.

(a.) A leaves his property "to his own nearest relations." The property goes to those who would be entitled to it if A had died intestate, leaving assets for the payment of his debts independently of such property.

(b.) A bequeaths 10,000 rupees "to B for his life, and after the death of B, to his own right heirs." The legacy after B's death belongs to those who would be entitled to it if it had formed part of A's unbequeathed property.

(c.) A leaves his property to B; but if B dies before him, to B's next-of-kin; B dies before A; the property devolves as if it had belonged to B, and he had died intestate, leaving assets for the payment of his debts independently of such property.

865. (d.) A leaves 10,000 rupees "to B for his life, and after his decease, to the heirs of C." The legacy goes as if it had belonged to C, and he had died intestate, leaving assets for the payment of his debts independently of the legacy.

81. Where a bequest is made to the "representatives," or "legal representatives," or "personal representatives," or "executors or administrators" of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it.

Illustration.

A bequest is made to the "legal representatives" of A. A has died intestate and insolvent. B is his administrator. B is entitled to receive the legacy, and shall apply it in the first place to the discharge of such part of A's debts as may remain unpaid: if there be any surplus, B shall pay it to those persons who at A's death would have been entitled to receive any property of A's which might remain after payment of his debts, or to the representatives of such persons.

82. Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him.*

83. Where property is bequeathed to a person, with a bequest in the alternative to another person or to a class of persons; if a contrary intention does not appear by the will, the legatee first named shall be entitled to the legacy, if he be alive at the time when it takes effect; but if he be then dead, the person or class of persons named in the second branch of the alternative shall take the legacy.

Illustrations.

(a.) A bequest is made to A or to B. A survives the testator. B takes nothing.
(b.) A bequest is made to A or to B. A dies after the date of the will, and before the testator. The legacy goes to B.

(c.) A bequest is made to A or to B. A is dead at the date of the will. The legacy goes to B.

(d.) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(e.) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator, the bequest to A's nearest of kin takes effect.

(f.) Property is bequeathed to A for life, and after his death to B or his heirs. A and B survive the testator. B dies in A's lifetime. Upon A's death the bequest to the heirs of B takes effect.

(g.) Property is bequeathed to A for life, and after his death to B or his heirs. B dies in the testator's lifetime. A survives the testator. Upon A's death the bequest to the heirs of B takes effect.

84. Where property is bequeathed to a person, and words are added which describe a class of persons, but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the will.

* This section, and sections 83 and 85, apply to the wills of Hindus &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870.

1885.

Act 10.

Illustrations.

(a.) A bequest is made—

to A and his children,
to A and his children by his present wife,
to A and his heirs,
to A and the heirs of his body,
to A and the heirs male of his body,
to A and the heirs female of his body,
to A and his issue,
to A and his family,
to A and his descendants,
to A and his representatives,
to A and his personal representatives,
to A, his executors, and administrators.

In each of these cases, A takes the whole interest which the testator had in the property.

(b.) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.

(c.) A bequest is made to A for life, and after his death to his issue. At the death of A the property belongs in equal shares to all persons who shall then answer the description of issue of A.

85. Where a bequest is made to a class of persons under a general de-

Bequest to class of persons under general description only. description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

Construction of terms.

86. The word "children" in a will applies only to lineal descendants in the first degree ;

the word "grandchildren" applies only to lineal descendants in the second degree of the person whose "children" or "grandchildren" are spoken of ;

the words "nephews" and "nieces" apply only to children of brothers or sisters ;

the words "cousins," or "first cousins" or "cousins-german," apply only to children of brothers or of sisters of the father or mother of the person whose "cousins," or first cousins," or "cousins-german," are spoken of ;

the words "first cousins once removed" apply only to children of cousins-german, or to cousins-german of a parent of the person whose "first cousins once removed" are spoken of ;

the words "second cousins" apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose "second cousins" are spoken of ;

the words "issue" and "descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of.

Words expressive of collateral relationship apply alike to relatives of full and of half blood.

All words expressive of relationship apply to a child in the womb who is afterwards born alive.

87. In the absence of any intimation to the contrary in the will, the

Words expressing relationship denote only legitimate relatives, or, failing such, relatives reputed legitimate. terms "child," "son," or "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or, where there is no such legitimate relative, a person who has acquired, at the date of the will, the reputation of being such relative.

Illustrations.

(a.) A, having three children, B, C, and D, of whom B and C are legitimate, and D is illegitimate, leaves his property to be equally divided among "his children." The property belongs to B and C in equal shares, to the exclusion of D.

1865. (b.) A, having a niece of illegitimate birth, who has acquired the reputation of being his niece, and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

Act 10. (c.) A, having in his will enumerated his children, and named as one of them B, who is illegitimate, leaves a legacy to "his said children." B will take a share in the legacy along with the legitimate children.

(d.) A leaves a legacy to the "children of B." B is dead, and has left none but illegitimate children. All those who had, at the date of the will, acquired the reputation of being the children of B, are objects of the gift.

(e.) A bequeathed a legacy to "the children of B." B never had any legitimate child. C and D had, at the date of the will, acquired the reputation of being children of B. After the date of the will, and before the death of the testator, E and F were born, and acquired the reputation of being children of B. Only C and D are objects of the bequest.

(f.) A makes a bequest in favour of his child by a certain woman, not his wife. B has acquired, at the date of the will, the reputation of being the child of A by the woman designated. B takes the legacy.

(g.) A makes a bequest in favour of his child to be born of a woman, who never becomes his wife. The bequest is void.

(h.) A makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is valid.

88.* Where a will purports to make two bequests to the same person,

Rules of construction where and a question arises whether the testator intended will purports to make two bequests to same person. to make the second bequest, instead of, or in addition to, the first ; if there is nothing in the will to

show what he intended, the following rules shall prevail in determining the construction to be put upon the will :—

First.—If the same specific thing is bequeathed twice to the same legatee in the same will, or in the will and again in a codicil, he is entitled to receive that specific thing only.

Second.—Where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

Third.—Where two legacies of unequal amount are given to the same person in the same will, or in the same codicil, the legatee is entitled to both.

Fourth.—Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

Explanation.—In the four last rules, the word "will" does not include a codicil.

Illustrations.

(a.) A, having ten shares, and no more, in the Bank of Bengal, made his will, which contains near its commencement the words, "I bequeath my ten shares in the Bank of Bengal to B." After other bequests, the will concludes with the words, "and I bequeath my ten shares in the Bank of Bengal to B." B is entitled simply to receive A's ten shares in the Bank of Bengal.

(b.) A, having one diamond ring, which was given him by B, bequeathed to C the diamond ring which was given him by B. A afterwards made a codicil to his will, and thereby, after giving other legacies, he bequeathed to C the diamond ring which was given him by B. C can claim nothing except the diamond ring which was given to A by B.

* This section, and sections 89—103 (both inclusive), apply to the wills of Hindus, &c., in the Lower Provinces and in the towns of Malwa and Bombay.—Act XXI. of 1870.

1865.
Act 10.

(c.) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, in the same will, repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(d.) A, by his will bequeaths to B the sum of 5,000 rupees, and afterwards, by the same will, bequeaths to B the sum of 6,000 rupees. B is entitled to 11,000 rupees.

(e.) A, by his will, bequeaths to B 5,000 rupees, and by a codicil to the will he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(f.) A, by one codicil to his will, bequeaths to B 5,000 rupees, and, by another codicil, bequeaths to him 6,000 rupees. B is entitled to receive 11,000 rupees.

(g.) A, by his will, bequeaths "500 rupees to B because she was his nurse," and in another part of the will bequeaths 500 rupees to B "because she went to England with his children." B is entitled to receive 1,000 rupees.

(h.) A, by his will, bequeaths to B the sum of 5,000 rupees, and also, in another part of the will, an annuity of 400 rupees. B is entitled to both legacies.

(i.) A, by his will, bequeaths to B the sum of 5,000 rupees, and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees, and takes a contingent interest in another sum of 5,000 rupees.

89. A residuary legatee may be constituted by any words that show an

Constitution of residuary legatee.

intention on the part of the testator that the person designated shall take the surplus or residue of his property.

Illustrations.

(a.) A makes her will, consisting of several testamentary papers, in one of which are contained the following words : "I think there will be something left, after all funeral expenses, &c., to give to B, now at school, towards equipping him to any profession he may hereafter be appointed to." B is constituted residuary legatee.

(b.) A makes his will, with the following passage at the end of it : "I believe there will be found sufficient in my banker's hands to defray and discharge my debts, which I hereby desire B to do, and keep the residue for her own use and pleasure." B is constituted the residuary legatee.

(c.) A bequeaths all his property to B, except certain stocks and funds, which he bequeaths to C. B is the residuary legatee.

90. Under a residuary bequest, the legatee is entitled to all property

Property to which residuary legatee entitled. belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.

Illustration.

A, by his will, bequeaths certain legacies, one of which is void under the hundred and fifth section, and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his will, A purchases a zamindari, which belongs to him at the time of his death. B is entitled to the two legacies and the zamindari as part of the residue.

91. If a legacy be given in general terms, without specifying the time

Time of vesting of legacy in general terms. when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and if he dies without having received it, it shall pass to his representatives.

92. If the legatee does not survive the testator, the legacy cannot take

In what case legacy lapses. effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the will that the testator intended that it should go to some other person.

In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

1865.

Act 10.

Illustrations.

(a.) The testator bequeaths to B^{***} 500 rupees which B owes him." B dies before the testator ; the legacy lapses.

(b.) A bequest is made to A and his children.* A dies before the testator, or happens to be dead when the will is made. The legacy to A and his children lapses.

(c.) A legacy is given to A, and in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(d.) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator ; B survives the testator. The bequest to B takes effect.

(e.) A sum of money is bequeathed to A on his completing his eighteenth year, and in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the lifetime of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(f.) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy will lapse.

Legacy does not lapse if one of two joint legatees die before testator.

93. If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole.

Illustration.

The legacy is simply to A and B. A dies before the testator. B takes the legacy.

94. But where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

Effect of words showing testator's intention to give distinct shares.

Illustration.

A sum of money is bequeathed to A, B, and C, to be equally divided among them. A dies before the testator. B and C shall only take so much as they would have had if A had survived the testator.

95. Where the share that lapses is a part of the general residue bequeathed by the will, that share shall go as undisposed of.

When lapsed share goes as undisposed of.

Illustration.

The testator bequeaths the residue of his estate to A, B, and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

96. Where a bequest shall have been made to any child* or other lineal descendant of the testator, and the legatee shall die in the lifetime of the testator, but any lineal descendant of his shall survive the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.

Illustration.

A makes his will, by which he bequeaths a sum of money to his son* B for his own absolute use and benefit. B dies before A, leaving a son C who survives A, and having made his will, whereby he bequeaths all his property to his widow D. The money goes to D.

* See s. 6, Act XXI., 1870.

97. Where a bequest is made to one person for the benefit of another, 1865.
Bequest to A for benefit of B does not lapse by A's death. the legacy does not lapse by the death, in the Act 10.
testator's lifetime, of the person to whom the bequest is made.

98. Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as shall be
Survivorship in case of bequest to described class. alive at the testator's death.

Exception.—If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise, the property shall at that time go to such of them as shall be then alive, and to the representatives of any of them who have died since the death of the testator.

Illustrations.

(a.) A bequeaths 1,000 rupees to "the children* of B" without saying when it is to be distributed among them. B had died previous to the date of the will, leaving three children, C, D, and E. E died after the date of the will, but before the death of A. C and D survive A. The legacy shall belong to C and D, to the exclusion of the representatives of E.

(b.) A bequeaths a legacy to the children° of B. At the time of the testator's death, B has no children. The bequest is void.

(c.) A lease for years of a house was bequeathed to A for his life, and after his decease to the children* of B. At the death of the testator, B had two children living, C and D; and he never had any other child. Afterwards, during the lifetime of A, C died, leaving E his executor. D has survived A. D and E are jointly entitled to so much of the leasehold term as remains unexpired.

(d.) A sum of money was bequeathed to A for her life, and after her decease to the children* of B. At the death of the testator, B had two children living, C and D, and after that event, two children, E and F, were born to B. C and E died in the lifetime of A, C having made a will, E having made no will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E, and one to F.

(e.) A bequeaths one-third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living, C and D, and after that event another sister E was born. C died during the life of B; D and E have survived B. One-third of A's lands belongs to D, E, and the representatives of C, in equal shares.

(f.) A bequeaths 1,000 rupees to B for life, and after his death equally among the children° of C. Up to the death of B, C had not had any child. The bequest after the death of B is void.

(g.) A bequeaths 1,000 rupees to "all the children° born or to be born" of B, to be divided among them at the death of ' '. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the lifetime of C, two other children, F and G, are born to B. After the death of C, another child is born to B. The legacy belongs to D, E, F, and G, to the exclusion of the after-born child of B.

(h.) A bequeaths a fund to the children* of B, to be divided among them when the eldest shall attain majority. At the testator's death, B had one child living, named C. He afterwards had two other children, named D and E. E died, but C and D were living when C attained majority. The fund belongs to C, D, and the representatives of E, to the exclusion of any child who may be born to B after C's attaining majority.

1865.

Act 10.

PART XII.

OF VOID BEQUESTS.

Bequest to person by particular description, who is not in existence at testator's death.

99. Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

Exception.—If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest, or otherwise; and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or, if he be dead, to his representatives.

Illustrations.

(a.) A bequeaths 1,000 rupees to the eldest son* of B. At the death of the testator, B had no son. The bequest is void.

(b.) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son* of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death, the legacy goes to C's son.

(c.) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son* of C. At the death of the testator, C had no son; afterwards, during the life of B, a son, named D, is born to C. D dies; then B dies. The legacy goes to the representative of D.

(d.) A bequeaths his estate of Greenacre to B for life, and at his decease to the eldest son* of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(e.) A bequeaths 1,000 rupees to the eldest son* of C, to be paid to him after the death of B. At the death of the testator, C has no son, but a son is afterwards born to him during the life of B, and is alive at B's death. C's son is entitled to the 1,000 rupees.

100. Where a bequest is made to a person not in existence at the time

of the testator's death, subject to a prior bequest contained in the will, the later bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Bequest to person not in existence at testator's death, subject to prior bequest.

Illustrations.

(a.) Property is bequeathed to A for his life, and after his death to his eldest son* for life, and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(b.) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters, some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.

(c.) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that, if any of them marries under the age of eighteen, her portion shall be settled, so that it may belong to herself for life, and may be divisible among

her children* after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect, in the case of each daughter who marries under eighteen, of substituting for the absolute bequest to her a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

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Act 10.

(d.) A bequeaths a sum of money to B for life, and directs that, upon the death of B, the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children* after her death. B has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B is contained, in the direction to settle the fund, and this direction amounts to a bequest, to persons not yet born, of a life-interest in the fund, that is to say, of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

101. No bequest is valid whereby the vesting of the thing bequeathed

may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

Illustrations.

(a.) A fund is bequeathed to A for his life, and after his death to B for his life, and after B's death to such of the sons* of B as shall first attain the age of 25. A and B survive the testator. Here the son of B who shall first attain the age of 25 may be a son born after the death of the testator; such son may not attain 25 until more than 18 years have elapsed from the death of the longer liver of A and B; and the vesting of the fund may thus be delayed beyond the lifetime of A and B, and the minority of the sons of B. The bequest after B's death is void.

(b.) A fund is bequeathed to A for his life, and after his death to B for his life, and after B's death to such of B's sons* as shall first attain the age of 25. B dies in the lifetime of the testator, leaving one or more sons. In this case the sons of B are persons living at the time of the testator's decease, and the time when either of them will attain 25 necessarily falls within his own lifetime. The bequest is valid.

(c.) A fund is bequeathed to A for his life, and after his death to B for his life, with a direction that after B's death it shall be divided amongst such of B's children* as shall attain the age of 18; but that, if no child of B shall attain that age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest at the expiration of 18 years from the death of B, a person living at the testator's decease. All the bequests are valid.

(d.) A fund is bequeathed to trustees for the benefit of the testator's daughters, with a direction that, if any of them marry under age, her share of the fund shall be settled so as to devolve after her death upon such of her children* as shall attain the age of 18. Any daughter of the testator to whom the direction applies must be in existence at his decease, and any portion of the fund which may eventually be settled as directed must vest not later than 18 years from the death of the daughter whose share it was. All these provisions are valid.

102. If a bequest is made to a class of persons, with regard to some of

whom it is inoperative by reason of the rules contained in the two last preceding sections, or either of them, such bequest shall be wholly void.*

Bequest to a class, some of whom may come under rules in sections 100 and 101.

* See s. 6, Act XXI., 1870.

† 8 Beng. 400.

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Illustrations.

Act 10. (a.) A fund is bequeathed to A for life, and after his death to all his children* who shall attain the age of 25. A survives the testator, and has some children living at the testator's death. Each child of A's leaving at the testator's death must attain the age of 25 (if at all) within the limits allowed for a bequest. But A may have children after the testator's decease, some of whom may not attain the age of 25 until more than 18 years have elapsed after the decease of A. The bequest to A's children, therefore, is inoperative as to any child born after the testator's death; and as it is given* to all his children as a class, it is not good as to any division of that class, but is wholly void.

(b.) A fund is bequeathed to A for his life, and after his death to B, C, D, and all other the children* of A who shall attain the age of 25. B, C, and D, are children of A living at the testator's decease. In all other respects the case is the same as that supposed in illustration (a). The mention of B, C, and D by name, does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void.

103. Where a bequest is void by reason of any of the rules contained

in the three last preceding sections, any bequest
 Bequest to take effect on failure of bequest void under section 100, 101, or 102. contained in the same will, and intended to take effect after or upon failure of such prior bequest, is also void.

Illustrations.

(a.) A fund is bequeathed to A for his life, and after his death to such of his sons* as shall first attain the age of 25, for his life, and after the decease of such son to B. A and B survive the testator. The bequest to B is intended to take effect after the bequest to such of the sons of A as shall first attain the age of 25, which bequest is void under section 101. The bequest to B is void.

(b.) A fund is bequeathed to A for his life, and after his death to such of his sons* as shall first attain the age of 25, and if no son of A shall attain that age, to B. A and B survive the testator. The bequest to B is intended to take effect upon failure of the bequest to such of A's sons* as shall first attain the age of 25, which bequest is void under section 101. The bequest to B is void.

104. A direction to accumulate the income arising from any property

shall be void; and the property shall be disposed
 Effect of direction for accumulation. of as if no accumulation had been directed.

Exception.—Where the property is immoveable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death;

and at the end of the year such property and income shall be disposed of respectively, as if the period during which the accumulation has been directed to be made had elapsed.

Illustrations.

(a.) The will directs that the sum of 10,000 rupees shall be invested in Government securities, and the income accumulated for 20 years, and that the principal, together with the accumulations, shall then be divided between A, B, and C. A, B, and C, are entitled to receive the sum of 10,000 rupees at the end of the year from the testator's death.

(b.) The will directs that 10,000 rupees shall be invested, and the income accumulated until A shall marry, and shall then be paid to him. A is entitled to receive 10,000 rupees at the end of a year from the testator's death.

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(c.) The will directs that the rents of the farm of Sultánpur shall be accumulated for ten years, and that the accumulation shall be then paid to the eldest son of A. At the death of the testator, A has an eldest son living, named B. B shall receive at the end of one year from the testator's death the rents which have accrued during the year, together with any interest which may have been made by investing them.

(d.) The will directs that the rents of the farm of Sultánpur shall be accumulated for ten years, and that the accumulations shall be then be paid to the eldest son of A. At the death of the testator, A has no son. The bequest is void.

(e.) A bequeaths a sum of money to B, to be paid to him when he shall attain the age of 18, and directs the interest to be accumulated till he shall arrive at that age. At A's death the legacy becomes vested in B; and so much of the interest as is not required for his maintenance and education is accumulated, not by reason of the direction contained in the will, but in consequence of B's minority.

105. No man having a nephew or niece or any nearer relative shall

Bequest to religious or charitable uses. have power to bequeath any property to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons.

Illustration.

A, having a nephew, makes a bequest by a will not executed nor deposited as required—

for the relief of poor people ;
for the maintenance of sick soldiers ;
for the erection or support of a hospital ;
for the education and preferment of orphans ;
for the support of scholars ;
for the erection or support of a school ;
for the building and repairs of a bridge ;
for the making of roads ;
for the erection or support of a church ;
for the repairs of a church ;
for the benefit of ministers of religion ;
for the formation or support of a public garden.
All these bequests are void.

PART XIII.*

OF THE VESTING OF LEGACIES.

106. Where, by the terms of a bequest, the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy.

And in such cases the legacy is, from the testator's death, said to be vested in interest.

Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the

* This Part applies to the wills of Hindus, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870.

1865. income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person.

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Illustrations.

(a.) A bequeaths to B 100 rupees, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.

(b.) A bequeaths to B 100 rupees, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest in B.

(c.) A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.

(d.) A fund is bequeathed to A until B attains the age of 18, and then to B. The legacy to B is vested in interest from the testator's death.

(e.) A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest to him.

(f.) A fund is bequeathed to A, B, and C in equal shares, to be paid to them on their attaining the age of 18 respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vest in interest in A, B, and C, subject to be divested in case A, B, and C shall all die under 18, and upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

Date of vesting when legacy contingent upon specified uncertain event.

107. A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens.

A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible.

In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

Exception.—Where a fund is bequeathed to any person upon his attaining a particular age, and the will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit, the bequest of the fund is not contingent.

Illustrations.

(a.) A legacy is bequeathed to D in case A, B, and C, shall all die under the age of 18. D has a contingent interest in the legacy until A, B, and C, all die under 18, or one of them attains that age.

(b.) A sum of money is bequeathed to A "in case he shall attain the age of 18," or "when he shall attain the age of 18." A's interest in the legacy is contingent until the condition shall be fulfilled by his attaining that age.

(c.) An estate is bequeathed to A for life, and after his death to B, if B shall then be living, but if B shall not be then living, to C. A, B, and C, survive the testator. B and C each take a contingent interest in the estate until the event which is to vest it in one or in the other shall have happened.

(d.) An estate is bequeathed as in the case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon B's death.

(e.) A legacy is bequeathed to A when she shall attain the age of 18, or shall marry under that age with the consent of B, with a proviso that, if she shall not attain 18, or marry under that age with B's consent, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy, although she may have married under 18 without the consent of B.

(f.) An estate is bequeathed to A until he shall marry, and after that event to B. B's interest in the bequest is contingent until the condition shall be fulfilled by A's marrying. 1865.
Act 10.

(g.) An estate is bequeathed to A until he shall take advantage of the Act for the Relief of Insolvent Debtors, and after that event to B. B's interest in the bequest is contingent until A takes advantage of the Act.

(h.) An estate is bequeathed to A if he shall pay 500 rupees to B. A's interest in the bequest is contingent until he has paid 500 rupees to B.

(i.) A leaves his farm of Sultānpur Khurd to B, if B shall convey his own farm of Sultānpur Buzurg to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.

(j.) A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is contingent, until the condition shall be fulfilled by the expiration of the five years without B's having married C, or by the occurrence, within that period, of an event which makes the fulfilment of the condition impossible.

(k.) A fund is bequeathed to A if B shall not make any provision for him by will. The legacy is contingent until B's death.

(l.) A bequeaths to B 500 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(m.) A bequeaths to B 500 rupees when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

Vesting of interest in bequest to such members of a class as shall have attained particular age.

108. Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

Illustration.

A fund is bequeathed to such of the children of A as shall attain the age of 18, with a direction that, while any child of A shall be under the age of 18, the income of the share, to which it may be presumed he will be eventually entitled, shall be applied for his maintenance and education. No child of A who is under the age of 18 has a vested interest in the bequest.

PART XIV,

OF ONEROUS BEQUESTS.

Onerous bequest.

109. Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.

Illustration.

A, having shares in (X), a prosperous joint-stock company, and also shares in (Y), a joint-stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint-stock companies. B refuses to accept the shares in (Y). He forfeits the shares in (X).

110. Where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them, and refuse the other, although the former may be beneficial, and the latter onerous.

One of two separate and independent bequests to same person may be accepted, and other refused.

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Illustration.

Act 10. A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money. B refuses to accept the lease. He shall not, by this refusal, forfeit the money.

PART XV.

OF CONTINGENT BEQUESTS.

111. Where a legacy is given if a specified uncertain event shall happen, and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect unless such event happens before the period when the fund bequeathed is payable or distributable.

Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.

Illustrations.

(a.) A legacy is bequeathed to A, and, in case of his death, to B. If A survives the testator, the legacy to B does not take effect.

(b.) A legacy is bequeathed to A, and, in case of his death without children, to B. If A survives the testator, or dies in his lifetime leaving a child, the legacy to B does not take effect.

(c.) A legacy is bequeathed to A when and if he attains the age of 18, and, in case of his death, to B. A attains the age of 18. The legacy to B does not take effect.

(d.) A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death without children," to C. The words "in case of B's death without children" are to be understood as meaning "in case B shall die without children during the lifetime of A."

(e.) A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death," to C. The words "in case of B's death" are to be considered as meaning "in case B shall die in the lifetime of A."

112. Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution, unless a contrary intention appear by the will.

Bequest to such of certain persons as shall be surviving at some period not specified.

Illustrations.

(a.) Property is bequeathed to A and B, to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.

(b.) Property is bequeathed to A for life, and after his death to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A; C survives A. At A's death the legacy goes to C.

(c.) Property is bequeathed to A for life, and after his death to B and C, or the survivor, with a direction that, if B should not survive the testator, his children are to stand in his place. C dies during the life of the testator; B survives the testator, but dies in the lifetime of A. The legacy goes to the representative of B.

(d.) Property is bequeathed to A for life, and after his death to B and C, with a direction that, in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterwards C dies in the lifetime of A. The legacy goes to the representative of C.

PART XVI.

OF CONDITIONAL BEQUESTS.

1885.

Act 10.

Bequest upon impossible condition.

113. A bequest upon an impossible condition is void.

Illustrations.

(a.) An estate is bequeathed to A on condition that he shall walk one hundred miles in an hour. The bequest is void.

(b.) A bequeaths 500 rupees to B on condition that he shall marry A's daughter. A's daughter was dead at the date of the will. The bequest is void.

Bequest upon illegal or immoral condition.

114. A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void.

Illustrations.

(a.) A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.

(b.) A bequeaths 5,000 rupees to his niece if she will desert her husband. The bequest is void.

115. Where a will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

Illustrations.

(a.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, D, and E. A marries with the written consent of B. C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(b.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, and D. D dies. A marries with the consent of B and C. A has fulfilled the condition.

(c.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, and D. A marries in the lifetime of B, C, and D, with the consent of B and C only. A has not fulfilled the condition.

(d.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, and D. A obtains the unconditional assent of B, C, and D to his marriage with E. Afterwards B, C, and D, capriciously retract their consent. A marries E. A has fulfilled the condition.

(e.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, and D. A marries without the consent of B, C, and D, but obtains their consent after the marriage. A has not fulfilled the condition.

(f.) A makes his will, whereby he bequeaths a sum of money to B if B shall marry with the consent of A's executors. B marries during the lifetime of A, and A afterwards expresses his approbation of the marriage. A dies. The bequest to B takes effect.

(g.) A legacy is bequeathed to A if he executes a certain document within a time specified in the will. The document is executed by A within a reasonable time, but not within the time specified in the will. A has not performed the condition, and is not entitled to receive the legacy.

116. Where there is a bequest to one person, and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator.

Illustrations.

(a.) A bequeaths a sum of money to his own children surviving him, and, if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

(b.) A bequeaths a sum of money to B, on condition that he shall execute a certain document within three months after A's death, and if he should neglect to do so, to C. B dies in the testator's lifetime. The bequest to C takes effect.

117. Where the will shows an intention that the second bequest shall

When second bequest not to take effect on failure of first.

take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect unless the prior bequest fails in that particular manner.

Illustration.

A makes a bequest to his wife, but, in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her. A and his wife perish together under circumstances which make it impossible to prove that she died before him. The bequest to B does not take effect.

118. A bequest may be made to any person with the condition super-

Bequest over, conditional upon happening or not happening of specified uncertain event.

added that, in case a specified uncertain event shall happen, the thing bequeathed shall go to another person; or that, in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person.

In each case the ulterior bequest is subject to the rules contained in sections 107, 108, 109, 110, 111, 112, 113, 114, 116, and 117.

Illustrations.

(a.) A sum of money is bequeathed to A, to be paid to him at the age of 18, and if he shall die before he attains that age, to B. A takes a vested interest in the legacy, subject to be divested and to go to B in case A shall die under 18.

(b.) An estate is bequeathed to A, with a proviso that, if A shall dispute the competency of the testator to make a will, the estate shall go to B. A disputes the competency of the testator to make a will. The estate goes to B.

(c.) A sum of money is bequeathed to A for life, and after his death to B, but if B shall then be dead, leaving a son, such son is to stand in the place of B. B takes a vested interest in the legacy, subject to be divested if he dies leaving a son in A's lifetime.

(d.) A sum of money is bequeathed to A and B, and if either should die during the life of C, then to the survivor living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money, and the representative of B takes the other half.

(e.) A bequeaths to B the interest of a fund for life, and directs the fund to be divided at her death equally among her three children, or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interest of the children pass to their representatives.

119. An ulterior bequest of the kind contemplated by the last pre-

Condition must be strictly fulfilled.

ceding section cannot take effect, unless the condition is strictly fulfilled.

Illustrations.

(a.) A legacy is bequeathed to A with a proviso that, if he marries without the consent of B, C, and D, the legacy shall go to E. D dies. Even if A marries without the consent of B and C, the gift to E does not take effect.

(b.) A legacy is bequeathed to A with a proviso that, if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower, and marries again without the consent of B. The bequest to C does not take effect. 1865.
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(c.) A legacy is bequeathed to A, to be paid at 18, or marriage, with a proviso that, if A dies under 18, or marries without the consent of B, the legacy shall go to C. A marries under 18, without the consent of B. The bequest to C takes effect.

Original bequest not affected by invalidity of second.

120. If the ulterior bequest be not valid, the original bequest is not affected by it.

Illustrations.

(a.) An estate is bequeathed to A for his life, with a condition superadded that, if he shall not, on a given day, walk 100 miles in an hour, the estate shall go to B. The condition being void, A retains his estate as if no condition had been inserted in the will.

(b.) An estate is bequeathed to A for her life, and, if she do not desert her husband, to B. A is entitled to the estate during her life as if no condition had been inserted in the will.

(c.) An estate is bequeathed to B for life, and, if he marries, to the eldest son of B for life. B, at the date of the testator's death, had not had a son. The bequest over is void under section 92, and A is entitled to the estate during his life.

Bequest conditioned that it shall cease to have effect in case specified uncertain event shall happen or not happen.

121. A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(a.) An estate is bequeathed to A for his life, with a proviso that, in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the wood; he loses his life-interest in the estate.

(b.) An estate is bequeathed to A, provided that, if he marries under the age of 25 without the consent of the executors named in the will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(c.) An estate is bequeathed to A, provided that, if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

(d.) An estate is bequeathed to A, with a proviso that, if she becomes a nun, she shall cease to have any interest in the estate. A becomes a nun. She loses her interest under the will.

(e.) A fund is bequeathed to A for life, and after his death to B, if B shall be then living, with a proviso that, if B shall become a nun, the bequest to her shall cease to have any effect. B becomes a nun in the lifetime of A. She thereby loses her contingent interest in the fund.

122. In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which such condition must be invalid under section 107. it relates be one which could legally constitute the condition of a bequest as contemplated by the one hundred and seventh section.

123. Where a bequest is made with a condition superadded that, unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect, but no time is specified for the performance of the act; if the legatee takes any step which renders impossible or indefinitely postponing act for which no time is specified, and on non-performance of which subject-matter to go over

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Illustrations.

(a.) A bequest is made to A, with a proviso that, unless he enters the army, the legacy shall go over to B. A takes holy orders, and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(b.) A bequest is made to A, with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries a stranger, and thereby indefinitely postpones the fulfilment of the condition. The bequest ceases to have effect.

124. Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

Performance of condition, precedent or subsequent, within specified time.

Further time in case of fraud.

PART XVII.

OF BEQUEST WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT.

125. Where a fund is bequeathed absolutely to or for the benefit of any person, but the will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction.

Direction that funds be employed in particular manner following absolute bequest of same to or for benefit of any person.

Illustration.

A sum of money is bequeathed towards purchasing a country-residence for A, or to purchase an annuity for A, or to purchase a commission in the army for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

126. Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him as if the will had contained no such direction.

Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee.

Illustrations.

(a.) A bequeaths the residue of his property to be divided equally among his daughters, and directs that the shares of the daughters shall be settled upon themselves respectively for life, and be paid to their children after their death. All the daughters die unmarried. The representatives of each daughter are entitled to her share of the residue.

(b.) A directs his trustees to raise a sum of money for his daughter, and he then directs that they shall invest the fund, and pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

127. Where a testator does not absolutely bequeath a fund, so as to 1865.

Bequest of fund for certain purposes, some of which cannot be fulfilled.

sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.

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Illustrations.

(a.) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and, at his death, shall divide the principal among his children; the son dies without having ever had a child. The fund, after the son's death, belongs to the estate of the testator.

(b.) A bequeaths the residue of his estate to be divided equally among his daughters, with a direction that they are to have the interest only during their lives, and that at their decease the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

•PART XVIII.

OF BEQUESTS TO AN EXECUTOR.

128. If a legacy is bequeathed to a person who is named an executor

Legatee named as executor cannot take unless he shews intention to act as executor.

of the will, he shall not take the legacy unless he proves the will, or otherwise manifests an intention to act as executor.

Illustration.

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the will, and dies a few days after the testator, without having proved the will. A has manifested an intention to act as executor.

PART XIX.

OF SPECIFIC LEGACIES.

129. Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other

Specific legacy defined.

parts of his property, the legacy is said to be specific.

Illustrations.

(a.) A bequeaths to B—

“the diamond-ring presented to him by C.”

“his gold chain;”

“a certain bale of wool;”

“a certain piece of cloth;”

“all his household-goods, which shall be in or about his dwelling-house in M Street, in Calcutta, at the time of his death;”

“the sum of 1,000 rupees in a certain chest;”

“the debt which B owes him;”

“all his bills, bonds, and securities belonging to him, lying in his lodgings in Calcutta;”

“all his furniture in his house in Calcutta;”

“all his goods on board a certain ship then lying in the river Hugli;”

“2,000 rupees which he has in the hands of C;”

“the money due to him on the bond of D;”

“his mortgage on the Rámpur factory;”

“one-half of the money owing to him on his mortgage of Rámpur factory;”

“1,000 rupees, being part of a debt due to him from C;”

- "his capital stock of 1000*l.* in East India Stock :"
- "his promissory notes of the Government of India, for 10,000 rupees, in their four per cent. loan :"
- "all such sums of money as his executors may, after his death, receive in respect of the debt due to him from the insolvent firm of D. and Company :"
- "all the wine which he may have in his cellar at the time of his death :"
- "such of his horses as B may select :"
- "all his shares in the Bank of Bengal :"
- "all the shares in the Bank of Bengal which he may possess at the time of his death :"
- "all the money which he has in the 5½ per cent. loan of the Government of India :"
- "all the Government securities he shall be entitled to at the time of his decease"

Each of these legacies is specific.

- (b.) A, having Government promissory notes for 10,000 rupees, bequeaths to his executors "Government promissory notes for 10,000 rupees in trust to sell" for the benefit of B.

The legacy is specific.

- (c.) A having property at Benares, and also in other places, bequeaths to B all his property at Benares.

The legacy is specific.

- (d.) A bequeaths to B—

- his house in Calcutta :
- his zamindári of Rámpur :
- his táluq of Rámnagar :
- his lease of the indigo-factory of Salkiya :
- an annuity of 500 rupees out of the rents of his zamindári of W.

A directs his zamindári of X to be sold, and the proceeds to be invested for the benefit of B.

Each of these bequests is specific.

- (e.) A, by his will, charges his zamindári of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamindári to D.

Each of these bequests is specific.

- (f.) A bequeaths a sum of money—

- to buy a house in Calcutta for B :
- to buy an estate in zila Fúridpur for B :
- to buy a diamond-ring for B :
- to buy a house for B :
- to be invested in shares in the Bank of Bengal for B :
- to be invested in Government securities for B :

A bequeaths to B—

- "a diamond-ring :"
- "a horse :"
- "10,000 rupees worth of Government securities :"
- "an annuity of 500 rupees :"
- "2,000 rupees, to be paid in cash :"
- "so much money as will produce 5,000 rupees four per cent. Government securities."

These bequests are not specific.

- (g.) A, having property in England and property in India, bequeaths a legacy to B, and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of the property which he may leave in England.

No one of these legacies is specific.

Request of sum certain where stocks, &c., in which invested, are described.

130. Where a sum certain is bequeathed, the legacy is not specific merely because the stocks, funds, or securities in which it is invested, are described in the will.

Illustration.

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A bequeaths to B—

“ 10,000 rupees of his funded property ;”

“ 10,000 rupees of his property now invested in shares of the East Indian Railway Company ;”

“ 10,000 rupees, at present secured by mortgage of Rámpur factory.

No one of these legacies is specific.

131. Where a bequest is made, in general terms, of a certain amount of any kind of stock, the legacy is not specific merely because the testator was, at the date of his will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Bequest of stock where testator had, at date of will, equal or greater amount of stock of same kind.

Illustration.

A bequeaths to B 5,000 rupees five per cent. Government securities. A had, at the date of the will, five per cent. Government securities for 5,000 rupees.

The legacy is not specific. •

Bequest of money where not payable until part of testator's property disposed of in certain way.

132. A money-legacy is not specific merely because the will directs its payment to be postponed until some part of the property of the testator shall have been reduced to a certain form, or remitted to a certain place.

Illustration.

A bequeaths to B 10,000 rupees, and directs that this legacy shall be paid as soon as B's property in India shall be realized in England.

The legacy is not specific.

133. Where a will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.

When enumerated articles not deemed specifically bequeathed.

134. Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.

Retention, in form, of specific bequest to several persons in succession.

Illustrations.

(a.) A, having a lease of a house for a term of years, 15 of which were unexpired at the time of his death, has bequeathed the lease to B for his life, and after B's death, to C. B is to enjoy the property as A left it, although, if B lives for 15 years, C can take nothing under the bequest.

(b.) A, having an annuity during the life of B, bequeaths it to C for his life, and after C's death to D. C is to enjoy the annuity as B left it, although, if B dies before D, D can take nothing under the bequest.

135. Where property comprised in a bequest to two or more persons in succession is not specifically bequeathed, it shall, in the absence of any direction to the contrary, be sold, and the proceeds of the sale shall be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the will.

Sale and investment of proceeds of property bequeathed to two or more persons in succession.

Illustration.

A, having a lease for a term of years, bequeaths "all his property" to B for life, and, after B's death, to C. The lease must be sold, and the proceeds invested as stated in the text, and the annual income arising from the fund is to be paid to B for life. At B's death the capital of the fund is to be paid to C.

Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

136. If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

PART XX.*

OF DEMONSTRATIVE LEGACIES.

137. Where a testator bequeaths a certain sum of money or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this, that where specified property is given to the legatee, the legacy is specific; where the legacy is directed to be paid out of specified property, it is demonstrative.

Illustrations.

(a.) A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The legacy to B is specific; the legacy to C is demonstrative.

(b.) A bequeaths to B—

"ten bushels of the corn which shall grow in his field of Greenacre;"

"80 chests of the indigo which shall be made at his factory of Rámpur;"

"10,000 rupees out of his five per cent. promissory notes of the Government of India;"

an annuity of 500 rupees "from his landed property;"

"1,000 rupees out of the sum of 2,000 rupees due to him by C."

A bequeaths to B an annuity, and directs it to be paid out of the rents arising from his taluq of Rámnagar.

A bequeaths to B—

"10,000 rupees out of his estate at Rámnagar," or charges it on his estate at Rámnagar;

"10,000 rupees being his share of the capital embarked in a certain business"

Each of these bequests is demonstrative.

138. Where a portion of a fund is specifically bequeathed, and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and, so far as the residue shall be deficient, out of the general assets of the testator.

Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

Illustration.

A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees, to be paid out of the debt due to him from W. The debt due to A from W is only 1,500 rupees; of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

* This Part applies to the wills of Hindus, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870.

PART XXI.*

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OF ADEMPMENT OF LEGACIES.

Act 10.

139. If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect by reason of the subject-matter having been withdrawn from the operation of the will.

Illustrations.

(a.) A bequeaths to B—

“the diamond ring presented to him by C:”

“his gold-chain:”

“a certain bale of wool:”

“a certain piece of cloth:”

“all his household-goods which shall be in or about his dwelling-house in M Street, in Calcutta, at the time of his death:”

A, in his lifetime,

sells or gives away the ring:

converts the chain into a cup:

converts the wool into cloth:

makes the cloth into a garment:

takes another house into which he removes all his goods

Each of these legacies is adeemed.

(b.) A bequeaths to B—

“the sum of 1,000 rupees in a certain chest:”

“all the horses in his stable.”

At the death of A, no money is found in the chest, and no horses in the stable.

The legacies are adeemed.

(c.) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned.

The legacy is adeemed.

140. A demonstrative legacy is not adeemed by reason that the property on which it is charged by the will does not exist at the time of the death of the testator, or has been converted into property of a different kind; but it shall, in such case, be paid out of the general assets of the testator.

141. Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

Illustrations.

(a.) A bequeaths to B—

“the debt which C owes him:”

“2,000 rupees which he has in the hands of D:”

“the money due to him on the bond of E:”

“his mortgage on the Rāmpur factory.”

All these debts are extinguished in A's lifetime, some with and some without his consent.

All the legacies are adeemed.

(b.) A bequeaths to B—

“his interest in certain policies of life-assurance.”

A in his lifetime receives the amount of the policies.

The legacy is adeemed.

* This Part applies to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870.

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Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.

142. The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received.

Illustration.

A bequeaths to B "the debt due to him by C." The debt amounts to 10,000 rupees. C pays to A 5,000 rupees, the one-half of the debt. The legacy is revoked by ademption so far as regards the 5,000 rupees received by A.

143. If a portion of an entire fund or stock be specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Ademption *pro tanto* by testator's receipt of portion of entire fund of which portion has been specifically bequeathed.

Illustration.

A bequeaths to B one-half of the sum of 10,000 rupees due to him from W. A in his lifetime receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W to A at the time of his death belong to B under the specific bequest.

144. Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee; if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied, so far as it will extend, in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and testator having received portion of that fund, remainder insufficient to pay both legacies.

Illustration.

A bequeaths to B 1,000 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. A afterwards receives 500 rupees, part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

Ademption where stock, specifically bequeathed, does not exist at testator's death.

145. Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.

Illustration.

A bequeaths to B—

"his capital stock of 1,000/ in East India Stock:"

"his promissory notes of the Government of India for 10,000 rupees in their four per cent. loan."

A sells the stock and the notes.

The legacies are adeemed.

Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death.

146. Where stock which has been specifically bequeathed does only in part exist at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Illustration.

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Act 10.

A bequeaths to B—

“his 10,000 rupees in the 5½ per cent. loan of the Government of India.”

A sells one-half of his 10,000 rupees in the loan in question.

One-half of the legacy is adeemed.

147. A specific bequest of goods under a description connecting them

Non-adeption of specific bequest of goods described as connected with certain place, by reason of removal.

with a certain place is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

Illustrations.

A bequeaths to B “all his household-goods which shall be in or about his dwelling-house in Calcutta at the time of his death.” The goods are removed from the house to save them from fire. A dies before they are brought back.

A bequeaths to B “all his household-goods which shall be in or about his dwelling-house in Calcutta at the time of his death.” During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

148. The removal of the thing bequeathed from the place in which it is

When removal of thing bequeathed does not constitute adeption.

stated in the will to be situated does not constitute an adeption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

Illustrations.

A bequeaths to B all the bills, bonds, and other securities for money belonging to him, then lying in his lodgings in Calcutta. At the time of his death, these effects had been removed from his lodgings in Calcutta.

A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only, which he removes with himself to each house. At the time of his death, the furniture is in the house at Chinsurah.

A bequeaths to B all his goods on board a certain ship then lying in the river Hugli. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death.

No one of these legacies is revoked by adeption.

149. Where the thing bequeathed is not the right to receive something

When thing bequeathed is a valuable to be received by testator from third person; and testator himself, or his representative, receives it.

of value from a third person, but the money or other commodity which shall be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an adeption;

but if he mixes it up with the general mass of his property, the legacy is adeemed.

Illustration.

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his property. The legacy is not adeemed.

150. Where a thing specifically bequeathed undergoes a change between

Change by operation of law of subject of specific bequest between date of will and testator's death.

the date of the will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed

was held, the legacy is not adeemed by reason of such change.

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Illustrations.

Act 10.

A bequeaths to B "all the money which he has in the 5½ per cent. loan of the Government of India."

The securities for the 5½ per cent. loan are converted during A's lifetime into five per cent. stock.

A bequeaths to B the sum of 2,000*l.* invested in Consols in the names of trustees for A.

The sum of 2,000*l.* is transferred by the trustees into A's own name.

A bequeaths to B the sum of 10,000 rupees in promissory notes of the Government of India, which he has power, under his marriage-settlement, to dispose of by will. Afterwards, in A's lifetime, the fund is converted into Consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed.

151. Where a thing specifically bequeathed undergoes a change be-

Change of subject without twopen the date of the will and the testator's
testator's knowledge. death, and the change takes place without the
knowledge or sanction of the testator, the legacy is not adeemed.

Illustration.

A bequeaths to B "all his three per cent. Consols." The Consols are, without A's knowledge, sold by his agent, and the proceeds converted into East India Stock. This legacy is not adeemed.

152. Where stock which has been specifically bequeathed is lent to

Stock specifically bequeath-
ed, lent to third party on
condition that it be replaced.

a third party on condition that it shall be re-
placed, and it is replaced accordingly, the legacy
is not adeemed.

Stock specifically bequeath-
ed, sold but replaced, and
belonging to testator at his
death.

153. Where stock specifically bequeathed is
sold, and an equal quantity of the same stock is
afterwards purchased, and belongs to the testator
at his death, the legacy is not adeemed.

PART XXII.*

OF THE PAYMENT OF LIABILITIES IN RESPECT OF THE SUBJECT OF A

BEQUEST.

154. Where property specifically bequeathed is subject at the death of

Non-liability of executor to
exonerate specific legatees.

the testator to any pledge, lien, or incumbrance,
created by the testator himself, or by any person
under whom he claims; then, unless a contrary intention appears by the
will, the legatee, if he accepts the bequest, shall accept it subject to such
pledge or incumbrance, and shall (as between himself and the testator's
estate) be liable to make good the amount of such pledge or incumbrance.

A contrary intention shall not be inferred from any direction which
the will may contain for the payment of the testator's debts generally.

Explanation.—A periodical payment in the nature of land-revenue or
in the nature of rent is not such an incumbrance as is contemplated by this
section.

* This part applies to the wills of Hindus, &c., in the Lower Provinces and in the towns
of Madras and Bombay.—Act XXI. of 1870.

Illustrations.

1865.

Act 10.

(a.) A bequeaths to B the diamond-ring given him by C. At A's death the ring is held in pawn by D, to whom it has been pledged by A. It is the duty of A's executors, if the estate of the testator's assets will allow them, to allow B to redeem the ring.

(b.) A bequeaths to B a zamindari, which, at A's death, is subject to a mortgage for 10,000 rupees, and the whole of the principal sum, together with interest to the amount of 1 000 rupees, is due at A's death. B, if he accepts the bequest, accepts it subject to this charge, and is liable, as between himself and A's estate, to pay the sum of 11,000 rupees thus due.

Completion of testator's title to things bequeathed to be at cost of his estate.

155. Where any thing is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

Illustrations.

(a.) A, having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths it to B, and dies before he has paid the purchase-money. The purchase-money must be made good out of A's assets.

(b.) A, having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down, and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase money. One-half of the purchase-money must be paid out of A's assets.

156. Where there is a bequest of any interest in immoveable property,

Exoneration of legatee's immoveable property for which land-revenue or rent payable periodically.

in respect of which payment in the nature of land-revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such

payments or a proportion of them up to the day of his death.

Illustration.

A bequeaths to B a house, in respect of which 365 rupees are payable annually by way of rent. A pays his rent at the usual time, and dies 25 days after. A's estate shall make good 25 rupees in respect of the rent.

157. In the absence of any direction in the will, where there is a specific

Exoneration of specific legatee's stock in joint-stock company.

bequest of stock in a joint-stock company, if any call or other payment is due from the testator at the time of his death in respect of such stock, such

call or payment shall, as between the testator's estate and the legatee, be borne by such estate;

but if any call or other payment shall, after the testator's death, become due in respect of such stock, the same shall, as between the testator's estate and the legatee, be borne by the legatee if he accept the bequest.

Illustrations.

(a.) A bequeathed to B his shares in a certain railway. At A's death there was due from him the sum of 5*l.* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s.* in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(b.) A has agreed to take 50 shares in an intended joint-stock company, and has contracted to pay up 5*l.* in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(c.) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

1865. (d.) A bequeaths to B his shares in a joint-stock company. B accepts the bequest. Afterwards the affairs of the company are wound up, and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

Act 10.

(e.) A is the owner of ten shares in a railway company. At a meeting held during his lifetime a call is made of 3*l.* per share payable by three instalments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. * A's estate must pay the first instalment, and B, if he accepts the legacy, must pay the remaining instalments.

PART XXIII.*

OF BEQUESTS OF THINGS DESCRIBED IN GENERAL TERMS.

158. If there be a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

Bequest of thing described in general terms.

Illustrations.

(a.) A bequeaths to B a pair of carriage-horses, or a diamond-ring. The executor must provide the legatee with such articles if, the state of the assets will allow it.

(b.) A bequeaths to B "his pair of carriage-horses." A has no carriage-horses at the time of his death. The legacy fails.

PART XXIV.*

OF BEQUESTS OF THE INTEREST OR PRODUCE OF A FUND.

159. Where the interest or produce of a fund is bequeathed to any person, and the will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.

Bequest of interest or produce of fund.

Illustrations.

(a.) A bequeaths to B the interest of his five per cent. promissory notes of the Government of India. There is no other clause in the will affecting those securities. B is entitled to A's five per cent. promissory notes of the Government of India.

(b.) A bequeaths the interest of his 5½ per cent. promissory notes of the Government of India to B for his life, and after his death to C. B is entitled to the interest of the notes during his life; and C is entitled to the notes upon B's death.

(c.) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

PART XXV.*

OF BEQUESTS OF ANNUITIES.

160. Where an annuity is created by will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Annuity created by will payable for life only, unless contrary intention appears by will.

ceive it for his life only, unless a contrary intention appears by the will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally,

or that a sum of money is bequeathed to be invested in the purchase of it.

* This Part applies to the wills of Hindûs, &c., in the Lower Provinces and in the towns of Madras and Bombay. —Act XXI. of 1870.

Illustrations.

1865.

Act 10.

(a.) A bequeaths to B 500 rupees a year. B is entitled during his life to receive the annual sum of 500 rupees.

(b.) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(c.) A bequeaths an annuity of 500 rupees to B for life, and on B's death to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

161. Where the will directs that an annuity shall be provided for any

Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity.

person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person, on the testator's death the legacy vests in interest in the legatee, and he is entitled, at his option, to have an annuity purchased for him, or to receive the money appropriated for that purpose by the will.

Illustrations.

(a.) A by his will directs that his executors shall, out of his property, purchase an annuity of 1,000 rupees for B. B is entitled, at his option, to have an annuity of 1,000 rupees for his life purchased for him, or to receive such a sum as will be sufficient for the purchase of such an annuity.

(b.) A bequeaths a fund to B for his life, and directs that after B's death it shall be laid out in the purchase of an annuity for C. B and C survive the testator. C dies in B's lifetime. On B's death the fund belongs to the representative of C.

162. Where an annuity is bequeathed, but the assets of the testator are

Abatement of annuity.

not sufficient to pay all the legacies given by the will, the annuity shall abate in the same proportion

as the other pecuniary legacies given by the will.

163. Where there is a gift of an annuity and a residuary gift, the whole

Where gift of annuity and residuary gift, whole annuity to be first satisfied.

of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate

shall be applied for that purpose.

PART XXVI.*

OF LEGACIES TO CREDITORS AND PORTIONERS.

164. Where a debtor bequeaths a legacy to his creditor, and it does not

Creditor *prima facie* entitled to legacy as well as debt.

appear from the will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.

165. Where a parent who is under obligation by contract to provide a

Child *prima facie* entitled to legacy as well as portion.

portion for a child fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the

child shall be entitled to receive the legacy as well as the portion.

* This Part applies to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870.

1865.

Illustration.

Act 10. A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

166. No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

Illustrations.

(a.) B bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(b.) A bequeaths 40,000 rupees to B, his orphan-niece, whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

PART XXVII.*

OF ELECTION.

167. Where a man, by his will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and in the latter case he shall give up any benefits which may have been provided for him by the will.

168. The interest so relinquished shall devolve as if it had not been disposed of by the will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

169. This rule will apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own.

Illustration.

(a.) The farm of Sultánpur was the property of C. A bequeathed it to B, giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultánpur, which is worth 800 rupees. C forfeits his legacy of 1,000 rupees, of which 800 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(b.) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must elect to give up the jewel, or to lose the estate.

(c.) A bequeaths to B 1,000 rupees, and to C an estate which will, under a settlement, belong to B if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate, or to lose the legacy.

(d.) A, a person of the age of 18, domiciled in British India, but owning real property in England, to which C is heir-at-law, bequeaths a legacy to C, and, subject thereto, devises and bequeaths to B "all his property, whatsoever and wheresoever," and dies under 21. The real property in England does not pass by the will. C may claim his legacy without giving up the real property in England.

* This Part applies to the wills of Hindús, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870.

Bequest for man's benefit how regarded for purpose of election.

170. A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself. 1865.
Act 10.

Illustration.

The farm of Sultanpur Khurd being the property of B, A bequeathed it to C, and bequeathed another farm, called Sultanpur Buzurg, to his own executors, with a direction that it should be sold, and the proceeds applied in payment of B's debts. B must elect whether he will abide by the will, or keep his farm of Sultanpur Khurd in opposition to it.

Person deriving benefit indirectly not put to election.

171. A person taking no benefit directly under the will, but deriving a benefit under it indirectly, is not put to his election.

Illustration.

The lands of Sultanpur are settled upon C for life, and, after his death, upon D, his only child. A bequeaths the lands of Sultanpur to B, and 1,000 rupees to C. C dies intestate, shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the will. In that capacity he receives the legacy of 1,000 rupees, and accounts to B for the rents of the lands of Sultanpur which accrued after the death of the testator, and before the death of C. In his individual character he retains the lands of Sultanpur in opposition to the will.

Person taking in individual capacity under will may in other character elect to take in opposition.

172. A person who, in his individual capacity, takes a benefit under the will, may, in another character, elect to take in opposition to the will.

Illustration.

The estate of Sultanpur is settled upon A for life, and after his death upon B. A leaves the estate of Sultanpur to D, and 2,000 rupees to B, and 1,000 rupees to C, who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultanpur in opposition to the will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the will.

Exception to the six last rules.—Where a particular gift is expressed in the will to be in lieu of something belonging to the legatee, which is also in terms disposed by the will, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the will.

Illustration.

Under A's marriage-settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultanpur during her life.

A by his will bequeaths to his wife an annuity of 200*l.* during her life, in lieu of her interest in the estate of Sultanpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000*l.* The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1,000*l.*

173. Acceptance of a benefit given by the will constitutes an election by the legatee to take under the will, if he has knowledge of his right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

When acceptance of benefit given by will constitutes election to take under will.

1865.

Illustrations.

Act 10.

(a.) A is owner of an estate called Sultánpur Khurd, and has a life-interest in another estate called Sultánpur Buzurg, to which, upon his death, his son B will be absolutely entitled. The will of A gives the estate of Sultánpur Khurd to B, and the estate of Sultánpur Buzurg to C. B, in ignorance of his own right to the estate of Sultánpur Buzurg, allows C to take possession of it, and enters into possession of the estate of Sultánpur Khurd. B has not confirmed the bequest of Sultánpur Buzurg to C.

(b.) A, the eldest son of A, is the possessor of an estate called Sultánpur. A bequeaths Sultánpur to C, and to B the residue of A's property. B, having been informed by A's executors that the residue will amount to 5,000 rupees, allows C to take possession of Sultánpur. He afterwards discovers that the residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultánpur to C.

174. Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the will without doing any act to express dissent.

Presumption arising from enjoyment by legatee for two years.

175. Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

Confirmation of bequest by act of legatee.

Illustration.

A bequeaths to B an estate to which C is entitled, and to C a coal-mine. C takes possession of the mine, and exhausts it. He has thereby confirmed the bequest of the estate to B.

176. If the legatee shall not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the will, the representatives shall, upon the expiration of that period, require him to make his election ;

When testator's representatives may call upon legatee to elect.

and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will.

Effect of non-compliance.

177. In case of disability the election shall be postponed until the disability ceases, or until the election shall be made by some competent authority.

Postponement of election in case of disability.

PART XXVIII.*

OF GIFTS IN CONTEMPLATION OF DEATH.

Property transferable by gift made in contemplation of death.

A gift is said to be made in contemplation of death where a man who is ill, and expects to die shortly of his illness, transfers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness.

Such gift resumable.

178. A man may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by the will.

Such a gift may be resumed by the giver.

* This Part does not apply to Hindus.—Act XXI. of 1870.

It does not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made. 1865.
Act 10.

Illustrations.

(a.) A, being ill, and in expectation of death, delivers to B, to be retained by him in case of A's death—

- a watch :
- a bond granted by C to A :
- a bank-note :
- a promissory note of the Government of India endorsed in blank :
- a bill of exchange endorsed in blank :
- certain mortgage-deeds.

A dies of the illness during which he delivered these articles.

B is entitled to—

- the watch :
- the debt secured by C's bond :
- the bank-note :
- the promissory note of the Government of India :
- the bill of exchange :
- the money secured by the mortgage-deeds.

(b.) A, being ill, and in expectation of death, delivers to B the key of a trunk, or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents, or to A's goods of bulk in the warehouse.

(c.) A, being ill, and in expectation of death, puts aside certain articles in separate parcels, and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

PART XXIX.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

179. The executor or administrator, as the case may be, of a deceased

Character and property of executor or administrator as such.

person, is his legal representative for all purposes, and all the property* of the deceased person vests in him as such.

180. When a will has been proved and deposited in a Court of compe-

Administration with copy annexed of authenticated copy of will proved abroad.

tent jurisdiction, situated beyond the limits of the province, whether in the British dominions, or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate only to appointed executor.

181. Probate can be granted only to an executor appointed by the will.

Appointment express or implied.

182. The appointment may be express or by necessary implication.†

* This does not include property vested in the deceased as executor or administrator under Act X. of 1865.—12 Beng. 428, 429.

† 7 Bom., A. C. J., 64 : 7 Beng. 563.

1865.

Illustrations.

Act 10. (a.) A wills that C be his executor if B will not. B is appointed executor by implication.

(b.) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(c.) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words: "I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

183. Probate cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

Persons to whom probate cannot be granted.

Grant of probate to several executors simultaneously or at different times.

184. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first and then to A.

185. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Separate probate of codicil discovered after grant of probate.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Procedure when different executors appointed by codicil.

186. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Accrual of representation to surviving executor.

187. No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction within the province shall have granted probate of the will under which the right is claimed, or shall have granted letters of administration under the one hundred and eightieth section.†

Right as executor or legatee when established.

188. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

Effect of probate.

To whom administration may not be granted.

189. Letters of administration cannot be granted to any person who is a minor or is of unsound mind;

nor to a married woman without the previous consent of her husband.

190. No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.

Right to intestate's property when established.

* See s. 6, Act XXI., 1870

† This section applies to the wills of Hindus, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870.

1865

Act 10:

191. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

192. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

193. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship;

except that, when one or more of several executors have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

194. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and, when made, shall preclude him from ever thereafter applying for probate of the will appointing him executor.

195. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved, and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.*

Grant of administration to universal or residuary legatee.

196. When the deceased has made a will, but has not appointed an executor; or when he has appointed an executor who is legally incapable, or refuses to act, or has died before the testator, or before he has proved the will; or when the executor dies after having proved the will, but before he has administered all the estate of the deceased; † an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

197. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Right to administration of representative of deceased residuary legatee.

198. When there is no executor, and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate,* or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

* See s. 6, Act XXI., 1870.

† 12 Beng. 423, 427.

1865.

Act 10.

199. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

200. When the deceased has died intestate, those who are connected with him either by marriage or by consanguinity are entitled to obtain letters of administration of his estate and effects in the order and according to the rules hereinafter stated.

201. If the deceased has left a widow, administration shall be granted to the widow, unless the Court shall see cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased.

Illustrations.

(a.) The widow is a lunatic, or has committed adultery, or has been barred by her marriage-settlement of all interest in her husband's estate; there is cause for excluding her from the administration.

(b.) The widow has married again since the decease of her husband; this is not good cause for her exclusion.

202. If the Judge think proper, he may associate any person or persons with the widow in the administration, who would be entitled solely to the administration, if there were no widow.

203. If there be no widow, or if the Court see cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate;

provided that, when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration.

Title of kindred to administration.

204. Those who stand in equal degree of kindred to the deceased are equally entitled to administration.*

205. The husband, surviving his wife, has the same right of administration of her estate as the widow has in respect of the estate of her husband.

206. When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration, and willing to act, they may be granted to a creditor.

207. Where the deceased has left property in British India, letters of administration must be granted according to the foregoing rules, although he may have been a domiciled inhabitant of a country in which the law relating to testate and intestate succession differs from the law of British India.

PART XXX.

OF LIMITED GRANTS.

1865.

Act 10.

(a.) *Grants limited in Duration.*

208. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident, and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

209. When the will has been lost or destroyed, and no copy has been made, nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

210. When the will is in the possession of a person residing out of the province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

211. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration until will produced. of administration may be granted, limited until the will, or an authenticated copy of it, be produced.

(b.) *Grants for the Use and Benefit of others having Right.*

212. When any executor is absent from the province in which application is made, and there is no executor within the province willing to act, letters of administration, with the will annexed, may be granted to the attorney* of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate of letters of administration granted to himself.

213. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the province, letters of administration with the will annexed may be granted to his attorney,* limited as above mentioned.

214. When a person entitled to administration in case of intestacy is absent from the province, and no person equally entitled is willing to act, letters of administration may be granted to the attorney of the absent person, limited as before mentioned.

215. When a minor is sole executor or sole residuary legatee, letters of administration, with the will annexed, may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor shall have completed the age of eighteen years, at which period, and not before, probate of the will shall be granted to him.

* The attorney must be within the jurisdiction of the Court.—4 Beng. App. 49.

1866. **216.** When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have completed the age of eighteen years.

Act 10. Administration during minority of several executors or residuary legatees.

217. If a sole executor, or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates, be a lunatic, letters of administration, with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the lunatic until he shall become of sound mind.

218. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court, and shall act under its direction.

Administration pendente lite.

(c.) For Special Purposes.

219. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an attorney to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

Probate limited to purpose specified in will.

220. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administration with will annexed limited to particular purpose.

221. Where a person dies leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the person beneficially interested in the property, or to some other person on his behalf.

Administration limited to property in which person has beneficial interest.

222. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein, and carried into complete execution.

Administration limited to suit.

223. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has been granted is absent from the province within which the Court that has granted the probate or letters of administration is situate, it shall be lawful for such Court to grant, to any person whom it may think fit, letters of administration, limited to the purpose of becoming and being made a party to a suit to be brought against the executor, or administrator, and carrying the decree which may be made therein into effect. 1865.
Act 10.

Administration limited to purpose of becoming party to suit to be brought against administrator.

probate or letters of administration, the executor or administrator to whom the same has been granted is absent from the province within which the Court that has granted the probate or letters of administration is situate, it shall be lawful for such Court to grant, to any person whom it may think fit, letters of administration, limited to the purpose of becoming and being made a party to a suit to be brought against the executor, or administrator, and carrying the decree which may be made therein into effect.

224. In any case in which it may appear necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any person whom such Court may think fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Administration limited to collection and preservation of deceased's property.

the property of a deceased person, the Court within whose district any of the property is situate may grant, to any person whom such Court may think fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

225. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor shall, at the time of the death of such person, be resident out of the province, and it shall appear to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who, under ordinary circumstances, would be entitled to a grant of administration, it shall be lawful for the Judge, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered, to appoint such person as he shall think fit to be administrator, and in every such case letters of administration may be limited or not as the Judge shall think fit.

Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor shall, at the time of the death of such person, be resident out of the province, and it shall appear to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who, under ordinary circumstances, would be entitled to a grant of administration, it shall be lawful for the Judge, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered, to appoint such person as he shall think fit to be administrator, and in every such case letters of administration may be limited or not as the Judge shall think fit.

(d.) Grants with Exception.

226. Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

Probate or administration with will annexed, subject to exception.

nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

227. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

Administration with exception.

nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

(e.) Grants of the Rest.

228. Whenever a grant, with exception of probate or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

Probate or administration of rest.

grant, with exception of probate or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f.) Grants of Effects unadministered.

229. If the executor to whom probate has been granted have died leaving a part of the testator's estate unadministered, a new representative may* be appointed for the purpose of administering such part of the estate.

Grant of effects unadministered.

If the executor to whom probate has been granted have died leaving a part of the testator's estate unadministered, a new representative may* be appointed for the purpose of administering such part of the estate.

1865. **230.** In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grant might have been made.*

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Administration when limited grant expired, and still some part of estate unadministered.

231. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.†

(g.) Alteration in Grants.

232. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

Procedure where codicil discovered after grant of administration with will annexed.

233. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

(h.) Revocation of Grants.

Revocation or annulment for just cause.

234. The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just cause."

Explanation.—Just cause is—

- 1st, that the proceedings to obtain the grant were defective in substance;
- 2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;
- 3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;
- 4th, that the grant has become useless and inoperative through circumstances.

Illustrations.

- (a.) The Court by which the grant was made had no jurisdiction.
- (b.) The grant was made without citing parties who ought to have been cited.
- (c.) The will of which probate was obtained was forged or revoked.
- (d.) A obtained letters of administration to the estate of B as his widow, but it has since transpired that she was never married to him.
- (e.) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.
- (f.) Since probate was granted, a later will has been discovered.
- (g.) Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.
- (h.) The person to whom probate was, or letters of administration were, granted, has subsequently become of unsound mind.

* 12 Beng. 428: see Act XXI. of 1870, s. 6.

† See Act XXI. of 1870, s. 6.

PART XXXI.

1885.

Act 10.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS
OF ADMINISTRATION.

Jurisdiction of District Judge in granting and revoking probates, &c.

235. The District Judge shall have jurisdiction in granting and revoking* probates and letters of administration in all cases within his district.

235A.† The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

236. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

237. The District Judge may order any person to produce and bring into Court any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined respecting the same; and such person shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending, or in not answering such questions, or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default, and the costs of the proceeding shall be in the discretion of the Judge.

238. The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, except as hereinafter otherwise provided, be regulated so far as the circumstances of the case will admit by the Code of Civil Procedure.

239. Until probate be granted of the will of a deceased person, or an administrator of his estate be constituted, the District Judge within whose jurisdiction any part of the property of the deceased person is situate is authorized and required to interfere for the protection of such property at the instance of any person claiming to be interested therein, and in all other

* 2 N. W. P. 268.

† See Act VI. of 1881, s. 2.

1865. cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose, if he shall see fit, to appoint an officer to take and keep possession of the property.

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240 Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it shall appear by a petition, verified as hereinafter mentioned, of the person applying for the same, that the testator or intestate, as the case may be, at the time of his decease, had a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

241. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if, in his judgment, it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, to grant them absolutely, or limited to the property within his own jurisdiction.

241A.* Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death, resided within the jurisdiction of such Delegate.

242. Probate or letters of administration shall have effect over all the property and estate, moveable or immoveable, of the deceased, throughout the province in which the same is granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted.

† Provided that probates and letters of administration granted by a High Court after the first day of April, 1875, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

242A.† Whenever a grant of probate or letters of administration is made by a High Court with such effect as last aforesaid, the Registrar, or such other officer as the High Court making the grant appoints in this behalf, shall send to each of the other High Courts a certificate to the following effect:—

I, A. B., Registrar [or as the case may be] of the High Court of Judicature at [or as the case may be], hereby certify that on the day of 187 , the High Court of Judicature at [or as the case may be] granted probate of the will [or letters of administration of the estate] of C. D., late of , deceased, to E. F., of , and G. H., of , and that such probate [or letters] has [or have] effect over all the property of the deceased throughout the whole of British India;

and such certificate shall be filed by the High Court receiving the same.

* See Act VI. of 1881, s. 3.

† See Act XIII. of 1875.

243. The application for probate or letters of administration, if made

1885:

and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

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244. Application for probate shall be made by a petition distinctly

Petition for probate.

written in English or in the language in ordinary use in proceedings before the Court in which the

application is made, with the will annexed, and stating

the time of the testator's death,

that the writing annexed is his last will and testament,

that it was duly executed, and

that the petitioner is the executor therein named ;

and in addition to these particulars, when the application is to the District Judge, the petition shall further state that the deceased at the time of his death had his fixed place of abode, or had some property, moveable or immovable, situate within the jurisdiction of the Judge ;

"and when the application is to a District Delegate, the petition shall further state that the deceased, at the time of his death, resided within the jurisdiction of such Delegate."*

245. In cases wherein the will is written in any language other than

English, or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language

Verification of translation by person other than Court-translator.

be one for which a translator is appointed ; or if the will be in any other language, then by any person competent to translate the same, in which

case such translation shall be verified by that person in the following manner:—

"I (A. B.) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

Petition for letters of administration.

246. Applications for letters of administration shall be made by petition distinctly written as aforesaid, and stating

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

that the deceased left some property within the jurisdiction of the District Judge "or District Delegate,"† to whom the application is made, and the amount of assets which are likely to come to the petitioner's hands ;

"and when the application is to a District Delegate, the petition shall further state that the deceased, at the time of his death, resided within the jurisdiction of such Delegate."‡

246A. § Every person applying to a High Court for probate of a will or

letters of administration of an estate, intended to petition for probate, &c. have effect throughout British India, shall state in

* See Act VI. of 1881, s. 4.

† The words quoted have been inserted by Act VI. of 1881, s. 9.

‡ This paragraph has been added by Act VI. of 1881, s. 4.

§ See Act XIII. of 1875.

865. his petition, in addition to the matters respectively required by section 244 and section 246 of this Act, that to the best of his belief no application has been made to any other High Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid ;

ot 10.

or, where any such application has been made, the High Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the High Court to which any application is made under the proviso to section 222 of this Act may, if it think fit, reject the same.

247. The petition for probate or letters of administration shall, in all cases, be subscribed by the petitioner and his pleader (if any), and shall be verified by the petitioner in the following manner or to the like effect :—

Petition for probate or administration to be signed and verified.

"I (A. B.), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

248. Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the will (when procurable) in the manner or to the effect following :—

Verification of petition for probate by one witness to will.

"I (C. D.), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present, and saw the said testator affix his signature (or mark) thereto (as the case may be), (or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

249. If any petition or declaration which is hereby required to be verified shall contain any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

Punishment for false averment in petition or declaration.

District Judge may examine petitioner in person.

250. In all cases it shall be lawful for the District Judge "or District Delegate,"* if he shall think proper,

to examine the petitioner in person, upon oath or solemn affirmation, and also

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge "or District Delegate"* issuing the same may direct.

Publication of citation.

* The words quoted have been inserted by Act VI. of 1881, s. 9.

251.* Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge, and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same. 1865.
Act 10.

252. The caveat shall be to the following effect:—
 “Let nothing be done in the matter of the estate of A. B., late of deceased, who died on the day of at , without notice to C. D., of ”

Form of caveat.

253. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge “or officer”† to whom the application has been made “or notice has been given of its entry with some other Delegate,”† until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

253A.† A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By “contention” is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

253B.† In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

253C.† In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

* This section has been substituted for the one originally enacted by Act VI. of 1881, s. 5.

† The words quoted have been inserted by Act VI. of 1881, s. 6.

‡ Sections 253A, 253B, and 253C, have been inserted by Act VI. of 1881, s. 7.

1865. District Delegate thinks it necessary, for the purposes of justice; to impound the same, which he is hereby authorized to do; and in that case the same
 Act 10. shall be sent by him to the District Judge.

254. When it shall appear to the Judge "or District Delegate"* that
 Grant of probate to be under seal of Court. probate of a will should be granted, he will grant the same under the seal of his Court in manner following :—

"I, , Judge of the District of , [or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate's jurisdiction)],† hereby make known that on the day of , in the year , the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will . named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of a year next ensuing, and also to render a true account thereof."

255. And wherever it shall appear to the District Judge "or District Delegate"* that letters of administration to the
 Grant of letters* of administration to be under seal of Court. estate of a person deceased, with or without a copy of the will annexed, should be granted, he will grant the same under the seal of his Court in manner following :—

"I, , Judge of the District of , [or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate's jurisdiction)],† hereby make known that on the day of letters of administration (with or without the will annexed, as the case may be), of the property and credits of , late of , deceased, were granted to , the father (or as the case may be) of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of one year next ensuing, and also to render a true account thereof."

256. Every person to whom any grant of administration shall be committed shall give a bond to the Judge of the
 Administration-bond. District Court to ensure for the benefit of the Judge for the time being, with one more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge shall, from time to time, by any general or special order, direct.

257. The Court may, on application made by petition, and on being
 Assignment of administration-bond. satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some person, his executors or administrators, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead

* The words quoted have been inserted by Act VI. of 1881, s. 9.

† The words in brackets have been inserted by Act VI. of 1881, s. 8.

of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof. 1865.
Act 10.

258. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days from the day of the testator or intestate's death.

259. Every District Judge "or District Delegate"* shall file and preserve all original wills of which probate or letters of administration with the will annexed may be granted by him among the records of his Court, until some public registry for wills is established; and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

260. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

261. In any case before the District Judge in which there is contention,† the proceedings shall take, as nearly as may be, the form of a regular suit according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

262. Where any probate is of letters of administration are revoked, all payments *bond fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same; and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him, which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

263. Every order made by a district Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

264. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

* The words quoted have been inserted by Act VI. of 1861, s. 9.

† See 2 N. W. P. 268.

1865.

PART XXXII.*

Act 10.

OF EXECUTORS OF THEIR OWN WRONG.

265. A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of executor of his own wrong. executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong.

Exceptions. First.—Intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his funeral or for the immediate necessities of his family or property, does not make an executor of his own wrong.

Second.—Dealing in the ordinary course of business with goods of the deceased received from another, does not make an executor of his own wrong.

Illustrations.

(a.) A uses or gives away or sells some of the goods of the deceased, or takes them to satisfy his own debt or legacy, or receives payment of the debts of the deceased. He is an executor of his own wrong.

(b.) A, having been appointed agent by the deceased in his lifetime to collect his debts and sell his goods, continues to do so after he has become aware of his death. He is an executor of his own wrong in respect of acts done after he has become aware of the death of the deceased.

(c.) A sues as executor of the deceased, not being such. He is an executor of his own wrong.

266. When a person has so acted as to become an executor of his own wrong, he is answerable, to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands, after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration.

PART XXXIII.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

267. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and to distrain for all rents due to him at the time of his death, as the deceased had when living.

268. All demands whatsoever, and all rights to prosecute or defend any action or special proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

* This Part does not extend to Hindús, Jinas, Sikhs, or Buddhists.—Act XXI. of 1870.

Illustrations.

1865.

Act 10.

(a.) A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(b.) A sues for divorce. A dies. The cause of action does not survive to his representative.

Power of executor or administrator to dispose of property.

269. An executor or administrator has power to dispose of the property of the deceased, either wholly or in part, in such manner as he may think fit.

Illustrations.

(a.) The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it. The sale is valid.

(b.) The executor, in the exercise of his discretion, mortgages a part of the immovable estate of the deceased. The mortgage is valid.

270. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Purchase by executor or administrator of deceased's property.

271. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the will or taken out administration.

Powers of several executors or administrators, exercisable by one.

Illustrations.

(a.) One of several executors has power to release a debt due to the deceased.

(b.) One has power to surrender a lease.

(c.) One has power to sell the property of the deceased, moveable or immovable.

(d.) One has power to assent to a legacy.

(e.) One has power to endorse a promissory note payable to the deceased.

(f.) The will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

Survival of powers on death of one of several executors or administrators.

272. Upon the death of one or more of several executors or administrators, all the powers of the office become vested in the survivors or survivor.

273. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator during minority.

274. An administrator during minority has all the powers of an ordinary administrator.

275. When probate or letters of administration have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

Powers of married executrix or administratrix.

PART XXXIV.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

276. It is the duty of an executor to perform the funeral of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

As to deceased's funeral.

277. An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same may have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that may have come to his hands, and the manner in which they have been applied or disposed of.

Inventory and account.

277A.* In all cases where it is sought to obtain a grant of probate or letters of administration intended to have effect throughout the whole of British India, the executor, or the person applying for administration after the first day of April, 1875, to the effects of any person dying in British India, and leaving property in more than one province, shall include in the inventory of the effects of the deceased his moveable or immoveable property situate in each of the provinces :

Inventory to include property in any part of British India.

And the value of such property situate in the said provinces, respectively, shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby, wheresoever situate within British India.

278. The executor or administrator shall collect, with reasonable diligence, the property of the deceased, and the debts that were due to him at the time of his death.

As to property of, and debts owing to, deceased.

279. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid before all debts.

280. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Expenses to be paid next after such expenses.

281. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan, or domestic servant, are next to be paid, and then the other debts of the deceased.

Wages for certain services to be next paid, and then other debts.

* See Act XLII. of 1875, s. 5.

Save as aforesaid, all debts to be paid equally and rateably.

282. Save as aforesaid, no creditor is to have a right of priority over another, by reason that his debt is secured by an instrument under seal, or on any other account.

1865.
Act 10.

But the executor or administrator shall pay all such debts* as he knows† of, including his own, equally and rateably,‡ as far as the assets of the deceased will extend.

Application of moveable property to payment of debts, where domicile not in British India.

283. If the domicile of the deceased was not in British India, the application of his moveable property to the payment of his debts is to be regulated by the law of the country in which he was domiciled.

Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 10,000 rupees, immovable property to the value of 5,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The debts on the instruments under seal are to be paid in full out of the moveable estate, and the proceeds of the immovable estate are to be applied, as far as they will extend, towards the discharge of the debts not under seal. Accordingly, one-half of the amount of the debts not under seal is to be paid out of the proceeds of the immovable estate.

284. No creditor who has received payment of a part of his debt by virtue of the last preceding section shall be entitled to share in the proceeds of the immovable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

Creditor paid in part under section 283 to bring payment into account before sharing in proceeds of immovable property.

Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 5,000 rupees, and immovable property to the value of 10,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debt on instruments not under seal to the same amount. The creditors holding instruments under seal receive half of their debts out of the proceeds of the moveable estate. The proceeds of the immovable estate are to be applied in payment of the debts on instruments not under seal until one-half of such debts has been discharged. This will leave 5,000 rupees, which are to be distributed rateably amongst all the creditors without distinction in proportion to the amount which may remain due to them.

Debts to be paid before legacies.

285. Debts of every description must be paid before any legacy.

286. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Executor or administrator not bound to pay legacies without indemnity.

287. If the assets, after payment of debts, necessary expenses, and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions ;

Abatement of general legacies.

* A liability to pay calls is a debt.—8 Bomb., O. C. J., 20.

† I.e., actually, not constructively.—8 Bomb., O. C. J., 20.

‡ 8 Bomb., O. C. J., 20.

1865.

Act 10.

and the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another.

288. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy when assets sufficient to pay debts.

289. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy, when assets sufficient to pay debts and necessary expenses.

290. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond-ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

291. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity where no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

PART XXXV.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

Assent necessary to complete legatee's title.

292. The assent of the executor is necessary to complete a legatee's title to his legacy.

Illustrations.

(a) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

293. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Effect of executor's assent to specific legacy.

This assent may be verbal, and it may be either express or implied from 1865.
Nature of assent. the conduct of the executor.

Act 10.

Illustrations.

(a.) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party purposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b.) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c.) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d.) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e.) A person to whom a specific article has been bequeathed takes possession of it, and retains it without any objection on the part of the executor. His assent may be presumed.

294. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.
Conditional assent.

Illustrations.

(a.) A bequeaths to B his lands of Sultānpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall, within a limited time, pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b.) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

295. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.
Assent of executor to his own legacy.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee, and is not referable to his character of executor.
Implied assent.

Illustration.

An executor takes the rent of a house, or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

296. The assent of the executor to a legacy gives effect to it from the death of the testator.
Effect of executor's assent.

Illustrations.

(a.) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b.) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

297. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.
Executor when to deliver legacies.

1865.

Illustration.

Act 10.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

PART XXXVI.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

298. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

Commencement of annuity when no time fixed by will.

299. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death; and shall, if the executor think fit, be paid when due, but the executor shall not be bound to pay it till the end of the year.

When annuity, to be paid quarterly or monthly, first falls due.

300. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Dates of successive payments when first payment directed to be made within given time, or on day certain.

and if the annuitant should die in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

Apportionment where annuitant dies between times of payment.

PART XXXVII.

OF THE INVESTMENT OF FUND TO PROVIDE FOR LEGACIES.

301. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall, at the end of the year, be invested in such securities as the High Court may, by any general rule to be made, from time to time authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of sum bequeathed where legacy, not specific, given for life.

302. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Investment of general legacy, to be paid at future time.

Intermediate interest.

The intermediate interest shall form part of the residue of the testator's estate.

303. Where an annuity is given, and no fund is charged with its payment, or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased; or,

Procedure when no fund charged with, or appropriated to, annuity.

If no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made, from time to time authorize or direct. 1865.
Act 10.

304. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee on his giving sufficient security for the payment of the legacy if it shall become due.

305. Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in such securities as the High Court may for the time being regard as good securities shall be converted into money and invested in such securities.

306. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

307. Such conversion and investment as are contemplated by the two last preceding sections shall be made at such times and in such manner as the executor shall in his discretion think fit ;

and until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of four per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

308. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom " or by whose District Delegate " the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards ;

and if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account, and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid ;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

* The words quoted have been inserted by Act VI. of 1881, s. 8.

1865.

PART XXXVIII.

Act 10.

OF THE PROCEDURE AND INTEREST OF LEGACIES.

Legatee's title to produce
of specific legacy.

309. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(a.) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b.) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c.) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

310. The legatee under a general residuary bequest is entitled to the Residuary legatee's title to produce of the residuary fund from the testator's death.
produce of residuary fund.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(a.) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b.) The testator bequeaths the residue of his property to A, when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

311. Where no time has been fixed for the payment of a general legacy, Interest when no time fixed interest begins to run from the expiration of one for payment of general legacy. year from the testator's death.

Exceptions.—(1.) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2.) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3.) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

312. Where a time has been fixed for the payment of a general legacy, interest when time fixed. interest begins to run from the time so fixed. 1865.

The interest up to such time forms part of the residue of the testator's estate. Act 10.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance.

Rate of interest.

313. The rate of interest shall be four per cent. per annum.

314. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

No interest on arrears of annuity within first year after testator's death.

315. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

Interest on sum to be invested to produce annuity.

PART XXXIX.

OF THE REFUNDING OF LEGACIES

316. When an executor has paid a legacy under the order of a Judge, he is entitled to call upon the legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

Refund of legacy paid under Judge's orders.

317. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

318. When the time prescribed by the will for the performance of a condition has elapsed without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has been allowed, under the one hundred and twenty-fourth section, for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Refund when legacy becomes due on performance of condition within further time allowed under section 124.

319. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

When each legatee compelled to refund in proportion.

320. Where an executor or administrator has given such notices as would have been given by the High Court in an administration-suit for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he shall not have had notice at the time of such distribution ;

Distribution of assets.

1865. but nothing herein contained shall prejudice the right of any creditor
 Act 10. Creditor may follow assets. or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

321. A creditor who has not received payment of his debt may* call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

322. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

323. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

324. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Illustration

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 to D. The assets are only 1,200 rupees, and, if properly administered, would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

326. The surplus or residue after usual payments to be paid to residuary legatees.

325. The refunding shall, in all cases, be without interest.

residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

PART XL

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

327. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Liability of executor or administrator for devastation.

* See Act XV. of 1877.

Illustrations.

1865.

Act 10.

(a.) The executor pays out of the estate an unfounded claim. He is liable to make good the loss.

(b.) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss.

(c.) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

328. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(a.) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount.

(b.) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount.

PART XLI.

MISCELLANEOUS.

329. [*Repealed by Act VII. of 1870.*]

330. [*Repealed by Act XXIV. of 1867.*]

331. The provisions of this Act shall not apply to intestate or testamentary succession to the property of any Hindú,* Muhammadan, or Buddhist,* nor shall they apply to any will made, or any intestacy occurring, before the first day of January 1866.

Succession to property of Hindús, &c., and certain wills, intestacies, and marriages not affected.

The fourth section shall not apply to any marriage contracted before the same day.

332. The Governor-General of India in Council shall, from time to time, have power, by an order, either retrospectively from the passing of this Act, or prospectively, to exempt from the operation of the whole or any part of this Act the members of any race, sect, or tribe in British India, or any part of such race, sect,† or tribe, to whom he may consider it impossible or inexpedient to apply the provisions of this Act or of the part of the Act mentioned in the order.

Power of Governor-General to exempt any race, sect, or tribe in British India from operation of Act.

The Governor-General of India in Council shall also have power from time to time to revoke such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations made under this section shall be published in the *Gazette of India*.

* Now see Act XXI. of 1870. See, too, 2 B. L. R., O. C. J., 79.

† Under this section Native Christians in the Province of Coorg have been exempted from the provisions of the Succession Act retrospectively from the 16th March 1865.—*Gazette of India*, July 25, 1868, p. 1094.

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- Abatement of annuity given by a will, s. 162.**
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TRANSFER OF PROPERTY ACT, NO. IV. OF 1882.

RECEIVED THE G.-G.'s ASSENT ON THE 17TH FEBRUARY 1882.

An Act to amend the law relating to the Transfer of Property by act of Parties.

Preamble. WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; It is hereby enacted as follows—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Transfer of Property Act, 1882."

Commencement.

It shall come into force on the first day of July, 1882;

Extent.

It extends in the first instance to the whole of British India except the territories respectively administered by the Governor of Bombay in Council, the Lieutenant-Governor of the Panjáb, and the Chief Commissioner of British Burma.

But any of the said Local Governments may, from time to time, by notification in the local official Gazette, extend this Act to the whole or any specified part of the territories under its administration.

And any Local Government may, with the previous sanction of the Governor-General in Council, from time to time, by notification in the local official Gazette, exempt, either retrospectively or prospectively, any part of the territories administered by such Local Government from all or any of the following provisions, namely:—

Sections fifty-four, paragraphs two and three, fifty-nine, one hundred and seven, and one hundred and twenty-three.

Notwithstanding anything in the foregoing part of this section, sections fifty-four, paragraphs two and three, fifty-nine, one hundred and seven, and one hundred and twenty-three, shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, 1877, under the power conferred by the first section of that Act or otherwise.*

2. In the territories to which this Act extends for the time being the enactments specified in the schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained shall be deemed to affect—

Saving of certain enactments, incidents, rights, liabilities, &c.

(a) the provisions of any enactment not hereby expressly repealed:

(b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force:

* As amended by Act III. of 1885, s. 1.

1882. (c) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability : or,

Act 4. (d) save as provided by section fifty-seven, and chapter four of this Act, any transfer by operation of law, or by, or in execution of, a decree or order of a Court of competent jurisdiction : and nothing in the second chapter of this Act shall be deemed to affect any rule of Hindú, Muhammádan, or Buddhist law.

Interpretation-clause,

3. In this Act, unless there is something repugnant in the subject or context,—

"immoveable property :

"immoveable property" does not include standing timber, growing crops, or grass :

"instrument :

"instrument" means a non-testamentary instrument :

"registered" means

registered in British India under the law for the time being in force regulating the registration of documents.

"registered :

"attached to the earth."

"attached to the earth" means—

(a) rooted in the earth, as in the case of trees and shrubs ;

(b) imbedded in the earth, as in the case of walls or buildings ; or

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached :

and a person is said to have "notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made,

or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, 1872, section 229.

Enactments relating to contracts to be taken as part of Act IX. of 1872.

4. The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872.

And sections fifty-four, paragraphs two and three, fifty-nine, one hundred and seven, and one hundred and twenty-three, shall be read as supplemental to the Indian Registration Act, 1877.*

CHAPTER II.

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(A.)—*Transfer of Property, whether moveable or immoveable.*

5. In the following sections "transfer of property" means an act by which a living person conveys property, in present defined. or in future, to one or more other living persons, or to himself and one or more other living persons, and "to transfer property" is to perform such act.

6. Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force :

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

* This paragraph has been added by Act III. of 1885, s. 3.

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(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(c) An easement cannot be transferred apart from the dominant heritage.

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(e) A mere right to sue for compensation for a fraud or for harm illegally caused cannot be transferred.

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(g) Stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred.

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an illegal purpose, or (3) to a person legally disqualified to be transferee.

(i) Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer, or lessee.*

7. Every person competent to contract, and entitled to transferable pro-

Persons competent to transfer. property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent, and in the manner, allowed and prescribed by any law for the time being in force.

8. Unless a different intention is expressed or necessarily implied, a

Operation of transfer. transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth ;

and, where the property is machinery attached to the earth, the moveable parts thereof ;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith ;

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer ;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

9. A transfer of property may be made without writing in every

Oral transfer. case in which a writing is not expressly required by law.

10. Where property is transferred subject to a condition or limitation

Condition restraining alienation. absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him : provided that property may be transferred to or

* This paragraph has been added by Act III. of 1885, s. 4.

1882. for the benefit of a woman (not being a Hindu, Muhammadan, or Buddhist),
Act 4. so that she shall not have power during her marriage to transfer or charge
 the same or her beneficial interest therein.

11. Where, on a transfer of property, an interest therein is created
 Restriction repugnant to in- absolutely in favour of any person, but the terms
 terest created. of the transfer direct that such interest shall be
 applied or enjoyed by him in a particular manner, he shall be entitled to
 receive and dispose of such interest as if there were no such direction.

Nothing in this section shall be deemed to affect the right to restrain,
 for the beneficial enjoyment of one piece of immoveable property, the enjoy-
 ment of another piece of such property, or to compel the enjoyment thereof
 in a particular manner

12. Where property is transferred subject to a condition or limitation
 Condition making interest making any interest therein, reserved or given to
 determinable on insolvency or or for the benefit of any person, to cease on his
 attempted alienation. becoming insolvent or endeavouring to transfer or
 dispose of the same, such condition or limitation is void.

Nothing in this section applies to a condition in a lease for the benefit
 of the lessor or those claiming under him.

13. Where, on a transfer of property, an interest therein is created for
 Transfer for benefit of un- the benefit of a person not in existence at the date
 born person. of the transfer, subject to a prior interest created
 by the same transfer, the interest created for the benefit of such person shall
 not take effect, unless it extends to the whole of the remaining interest of
 the transferor in the property.

Illustration.

A transfers property, of which he is the owner, to B, in trust for A and his in-
 tended wife successively for their lives, and after the death of the survivor for the
 eldest son of the intended marriage for life, and after his death for A's second son.
 The interest so created for the benefit of the eldest son does take effect, because it
 does not extend to the whole of A's remaining interest in the property.

14. No transfer of property can operate to create an interest which is
 Rule against perpetuity. to take effect after the lifetime of one or more
 persons living at the date of such transfer, and
 the minority of some person who shall be in existence at the expiration of
 that period, and to whom, if he attains full age, the interest created is to
 belong.

15. If, on a transfer of property, an interest therein is created for the
 Transfer to class some of benefit of a class of persons with regard to some
 whom come under sections 13 of whom such interest fails by reason of any of the
 and 14. rules contained in sections thirteen and fourteen,
 such interest fails as regards the whole class.

16. Where an interest fails by reason of any of the rules contained in
 Transfer to take effect on sections thirteen, fourteen, and fifteen, any inter-
 failure of prior transfer. est created in the same transaction, and intended
 to take effect after or upon failure of such prior interest, also fails.

17. The restrictions in sections fourteen, fifteen, and sixteen, shall not
 Transfer in perpetuity for apply to property transferred for the benefit of the
 benefit of public. public in the advancement of religion, knowledge,
 commerce, health, safety, or any other object beneficial to mankind.

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18. Where the terms of a transfer of property direct that the income

arising from the property shall be accumulated,
Direction for accumulation. such direction shall be void, and the property shall

be disposed of as if no accumulation had been directed.

Exception.—Where the property is immoveable, or where accumulation is directed to be made from the date of the transfer, the direction shall be valid in respect only of the income arising from the property within one year next following such date; and at the end of the year such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made had elapsed.

19. Where, on a transfer of property, an interest therein is created in

Vested interest.

favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation.—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that, if a particular event shall happen, the interest shall pass to another person.

20. Where, on a transfer of property, an interest therein is created for

When unborn person acquires vested interest on transfer for his benefit.

the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

21. Where, on a transfer of property, an interest therein is created in

Contingent interest.

favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event; in the latter, when the happening of the event becomes impossible.

Exception.—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

22. Where, on a transfer of property, an interest therein is created in

Transfer to members of a class who attain a particular age.

favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

23. Where, on a transfer of property, an interest therein is to accrue

Transfer contingent on happening of specified uncertain event.

to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails, unless

1882. such event happens before, or at the same time as, the intermediate or
 Act 4. precedent interest ceases to exist.

24. Where, on a transfer of property, an interest therein is to accrue
 Transfer to such of certain persons as shall be surviving at
 persons as survive at some some period, but the exact period is not specified,
 period not specified. the interest shall go to such of them as shall be
 alive when the intermediate or precedent interest ceases to exist, unless a
 contrary intention appears from the terms of the transfer.

Illustration.

A transfers property to B for life, and after his death to C and D, equally to be
 divided between them, or to the survivor of them. C dies during the life of B. D
 survives B. At B's death the property passes to D.

25. An interest created on a transfer of property, and dependent upon
 Conditional transfer. a condition, fails if the fulfilment of the condition
 is impossible, or is forbidden by law, or is of such
 a nature that, if permitted, it would defeat the provisions of any law, or is
 fraudulent, or involves or implies injury to the person or property of another,
 or the Court regards it as immoral or opposed to public policy.

Illustrations.

(a.) A lets a farm to B on condition that he shall walk a hundred miles in an
 hour. The lease is void.

(b.) A gives Rs. 500 to B on condition that he shall marry A's daughter C. At
 the date of the transfer C was dead. The transfer is void.

(c.) A transfers Rs. 500 to B on condition that she shall murder C. The
 transfer is void.

(d.) A transfers Rs. 500 to his niece C if she will desert her husband. The
 transfer is void.

26. Where the terms of a transfer of property impose a condition to
 Fulfilment of condition pre- be fulfilled before a person can take an interest in
 cedent. the property, the condition shall be deemed to
 have been fulfilled if it has been substantially complied with.

Illustrations.

(a.) A transfers Rs. 5,000 to B on condition that he shall marry with the con-
 sent of C, D, and E. E dies. B marries with the consent of C and D. B is
 deemed to have fulfilled the condition.

(b.) A transfers Rs. 5,000 to B on condition that he shall marry with the con-
 sent of C, D, and E. B marries without the consent of C, D, and E, but obtains
 their consent after the marriage. B has not fulfilled the condition.

27. Where, on a transfer of property, an interest therein is created in
 Conditional transfer to one favour of one person, and by the same transaction
 person coupled with transfer an ulterior disposition of the same interest is made
 to another on failure of prior in favour of another, if the prior disposition
 disposition. under the transfer shall fail, the ulterior disposi-
 tion shall take effect upon the failure of the prior disposition, although the
 failure may not have occurred in the manner contemplated by the transferor.

But where the intention of the parties to the transaction is that the
 ulterior disposition shall take effect only in the event of the prior disposition
 failing in a particular manner, the ulterior disposition shall not take effect
 unless the prior disposition fails in that manner.

Illustrations.

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(a.) A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A's death, and if he should neglect to do so, to C. B dies in A's lifetime. The disposition in favour of C takes effect.

(b.) A transfers property to his wife ; but in case she should die in his lifetime, transfers to B that which he had transferred to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.

28. On a transfer of property an interest therein may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen such interest shall pass to another person, or that in case a specified uncertain event shall not happen such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections ten, twelve, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, and twenty-seven.

29. An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Illustration.

A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor, or marries without C's consent, the Rs. 500 shall go to D. B marries when only 17 years of age, without C's consent. The transfer to D takes effect.

Prior disposition not affected by invalidity of ulterior disposition.

30. If the ulterior disposition is not valid, the prior disposition is not affected by it.

Illustration.

A transfers a farm to B for her life, and, if she do not desert her husband, to C. B is entitled to the farm during her life as if no condition had been inserted.

31. Subject to the provisions of section twelve, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.

Illustrations.

(a.) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(b.) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

32. In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

Such condition must not be invalid.

33. Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

Transfer conditional on performance of act, no time being specified for performance.

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34. Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non-fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

Election.

35. Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of, subject nevertheless, where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer, and in all cases where the transfer is for consideration, to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

Illustration.

The farm of Sultānpur is the property of C, and worth Rs. 800. A by an instrument of gift professes to transfer it to B, giving by the same instrument Rs. 1,000 to C. C elects to retain the farm. He forfeits the gift of Rs. 1,000.

In the same case, A dies before the election. His representative must, out of the Rs. 1,000, pay Rs. 800 to B.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

A person who in his one capacity takes a benefit under the transaction may in another dissent therefrom.

Exception to the last preceding four rules.—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent. 1882.
Act 4.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

Illustration.

A transfers to B an estate to which C is entitled, and as part of the same transaction gives C a coal-mine. C takes possession of the mine, and exhausts it. He has thereby confirmed the transfer of the estate to B.

If he does not, within one year after the date of the transfer, signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and if he does not comply with such requisition, within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Apportionment.

36. In the absence of a contract or local usage to the contrary, all rents,

Apportionment of periodical payments on determination of interest of person entitled.

annuities, pensions, dividends, and other periodical payments in the nature of income, shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and the transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

37. When, in consequence of a transfer, property is divided and held

Apportionment of benefit of obligation on severance.

in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be served, and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be served, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until the Local Government by notification in the official Gazette so directs.

Illustrations.

(a.) A sells to B, C, and D a house situate in a village, and leased to E at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half the purchase-money, and C and D one quarter each. E, having notice of this, must pay Rs. 15 to B, Rs. 7½ to C, and Rs. 7½ to D, and must deliver the sheep according to the joint direction of B, C, and D.

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Act 4.

(b.) In the same case, each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation, E had agreed as a term of his lease to perform this work for A. B, C, and D, severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all, according to such directions as B, C, and D, may join in giving.

B.—Transfer of Immoveable Property.

38. Where any person, authorized only under circumstances in their

Transfer by person authorized only under certain circumstances to transfer.

nature variable to dispose of immoveable property, transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

Illustration.

A, a Hindú widow, whose husband has left collateral heirs, alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable, to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary, and, acting in good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

39. Where a third person has a right to receive maintenance, or a

Transfer where third person is entitled to maintenance.

provision for advancement or marriage, from the profits of immoveable property, and such property is transferred with the intention of defeating such right, the right may be enforced against the transferee, if he has notice of such intention, or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

Illustration.

A, a Hindú, transfers Sultánpur to his sister-in-law B, in lieu of her claim against him for maintenance in virtue of his having become entitled to her deceased husband's property, and agrees with her that, if she is dispossessed of Sultánpur, A will transfer to her an equal area out of such of several other specified villages in his possession as he may elect. A sells the specified villages to C, who buys in good faith, without notice of the agreement. B is dispossessed of Sultánpur. She has no claim on the villages transferred to C.

40. Where, for the more beneficial enjoyment of his own immoveable

Burden of obligation imposing restriction on use of land.

property, a third person has, independently of any interest in the immoveable property of another or of any easement thereon, a right to restrain the enjoyment of the latter property, or to compel its enjoyment in a particular manner, or

where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immoveable property, but not amounting to interest or easement.

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

Illustration.

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A contracts to sell Sultānpur to B. While the contract is still in force, he sells Sultānpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

41. Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property, and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

42. Where a person transfers any immovable property, reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power.

Illustration.

A lets a house to B, and reserves power to revoke the lease if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

43. Where a person erroneously represents that he is authorized to transfer certain immovable property, and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property, at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Illustration.

A, a Hindū who has separated from his father B, sells to C three fields, X, Y, and Z, representing that A is authorized to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but, on B's dying, A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

44. Where one of two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

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45. Where immovable property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

46. Where immovable property is transferred for consideration by persons having distinct interest therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

Illustrations.

(a.) A, owning a moiety, and B and C, each a quarter share, of mauza Sultānpur, exchange an eighth share of that mauza for a quarter share of mauza Lālpura. There being no agreement to the contrary, A is entitled to an eighth share in Lālpura, and B and C each to a sixteenth share in that mauza.

(b.) A being entitled to a life-interest in mauza Atrali, and B and C to the reversion, sell the mauza for Rs. 1,000. A's life-interest is ascertained to be worth Rs. 600; the reversion, Rs. 400. A is entitled to receive Rs. 600 out of the purchase-money, B and C to receive Rs. 400.

47. Where several co-owners of immovable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and where they were unequal, proportionately to the extent of such shares.

Illustration.

A, the owner of an eight-anna share, and B and C, each the owner of a four-anna share, in mauza Sultānpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one-anna share is taken from the share of A, and half an anna share from each of the shares of B and C.

48. Where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

49. Where immovable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a con-

tract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property. 1882.
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50. No person shall be chargeable with any rents or profits of any immovable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

Illustration.

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

51. When the transferee of immovable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market-value thereof irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

52. During the active prosecution in any Court having authority in British India, or established beyond the limits of British India by the Governor-General in Council, of a contentious suit or proceeding in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

53. Every transfer of immovable property, made with intent to defraud prior or subsequent transferees thereof for consideration, or co-owners or other persons having an interest in such property, or to defeat or delay the creditors of the transferor, is voidable at the option of any person so defrauded, defeated, or delayed.

Where the effect of any transfer of immovable property is to defraud, defeat, or delay any such person, and such transfer is made gratuitously or for a grossly inadequate consideration, the transfer may be presumed to have been made with such intent as aforesaid.

Nothing contained in this section shall impair the rights of any transferee in good faith and for consideration.

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CHAPTER III.

Act 4.

OF SALES OF IMMOVEABLE PROPERTY.

54. "Sale" is a transfer of ownership in exchange for a price paid or promised, or part-paid and part-promised.

Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

Sale how made.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

Contract for sale.

It does not, of itself, create any interest in or charge on such property.

55. In the absence of a contract to the contrary, the buyer and the Rights and liabilities of seller of immoveable property respectively are buyer and seller. subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold :

(1.) The seller is bound—

(a) to disclose to the buyer any material defect in the property of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover ;

(b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power ;

(c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto ;

(d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place ;

(e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession, as an owner of ordinary prudence would take of such property and documents ;

(f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits ;

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(2.) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists, and that he has power to transfer the same :

provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered, or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3.) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power :

provided that, (a), where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and (b), where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (a) the seller, and in case (b) the buyer of the lot of greatest value, is bound, upon every reasonable request by the buyer or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents, and furnish such true copies thereof or extracts therefrom as he may require ; and in the meantime, the seller or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncanceled, and undefaced, unless prevented from so doing by fire or other inevitable accident ;

(4.) The seller is entitled—

(a) to the rents and profits of the property till the ownership thereof passes to the buyer ;

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part.

(5.) The buyer is bound—

(a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest ;

(b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs ; provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto ;

(c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury, or decrease in value of the property not caused by the seller.

(d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6.) The buyer is entitled—

(a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof ;

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him with notice of the payment, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the

1882. buyer in anticipation of the delivery and for interest on such amount ; and,
 Act 4. when he properly declines to accept the delivery, also for the earnest (if any)
 and for the costs (if any) awarded to him of a suit to compel specific per-
 formance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent.

56. Where two properties are subject to a common charge, and one of
 the properties is sold, the buyer is, as against the
 seller, in the absence of a contract to the contrary,
 entitled to have the charge satisfied out of the other property, so far as such
 property will extend.

Discharge of Incumbrances on Sale.

57. (a.) Where immoveable property subject to any incumbrance, whe-
 ther immediately payable or not, is sold by the
 Court or in execution of a decree, or out of Court,
 the Court may, if it thinks fit, on the application
 of any party to the sale, direct or allow payment into Court,

(1) in the case of an annual or monthly sum charged on the property, or
 of a capital sum charged on a determinable interest in the pro-
 perty,—of such amount as, when invested in securities of the
 Government of India, the Court considers will be sufficient, by
 means of the interest thereof, to keep down or otherwise provide
 for that charge, and

(2) in any other case of a capital sum charged on the property,—of the
 amount sufficient to meet the incumbrance and any interest due
 thereon.

But in either case there shall also be paid into Court such additional
 amount as the Court considers will be sufficient to meet the contingency of
 further costs, expenses, and interest, and any other contingency except de-
 preciation of investments, not exceeding one-tenth part of the original
 amount to be paid in, unless the Court for special reasons (which it shall
 record) thinks fit to require a larger additional amount.

(b.) Thereupon the Court may, if it thinks fit, and after notice to the
 incumbrancer, unless the Court, for reasons to be recorded in writing, thinks
 fit to dispense with such notice, declare the property to be freed from the in-
 cumbrance, and make any order for conveyance, or vesting order, proper for
 giving effect to the sale, and give directions for the retention and investment
 of the money in Court.

(c.) After notice served on the persons interested in or entitled to the
 money or fund in Court, the Court may direct payment or transfer thereof
 to the persons entitled to receive or give a discharge for the same, and gene-
 rally may give directions respecting the application or distribution of the
 capital or income thereof.

(d.) An appeal shall lie from any declaration, order, or direction under
 this section as if the same were a decree.

(e.) In this section "Court" means (1) a High Court in the exercise of
 its ordinary or extraordinary original civil jurisdiction, (2) the Court of a
 District Judge within the local limits of whose jurisdiction the property or
 any part thereof is situate, (3) any other Court which the Local Government
 may, from time to time, by notification in the official Gazette, declare to be
 competent to exercise the jurisdiction conferred by this section.

CHAPTER IV.

OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

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58. (a.) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(b.) Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold, and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage, and the mortgagee a simple mortgagee.

Mortgage by conditional sale. **(c.)** Where the mortgagor ostensibly sells the mortgaged property—

on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale, and the mortgagee a mortgagee by conditional sale.

(d.) Where the mortgagor delivers possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property, and to appropriate them in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest and partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage, and the mortgagee an usufructuary mortgagee.

(e.) Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

59. Where the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by an instrument signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.

Nothing in this section shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karachi, and Rangoon, by delivery to a creditor or his agent of documents of title to immoveable property, with intent to create a security thereon.

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Rights and Liabilities of Mortgagor.

Act 4.

60. At any time after the principal money has become payable, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver the mortgage-deed, if any, to the mortgagor, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished :

Provided that the right conferred by this section has not been extinguished by act of the parties or by order of a Court.

The right conferred by this section is called a right to redeem, and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass, or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

61. A mortgagor seeking to redeem any one mortgage shall, in the absence of a contract to the contrary, be entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

Illustration.

A, the owner of farms Z and Y, mortgages Z to B for Rs. 1,000. A afterwards mortgages Y to B for Rs. 1,000, making no stipulation as to any additional charge on Z. A may institute a suit for the redemption of the mortgage on Z alone.

Right of usufructuary mortgagor to recover possession.

62. In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property—

(a) where the mortgagee is authorized to pay himself the mortgage-money from the rents and profits of the property,—when such money is paid ;

(b) where the mortgagee is authorized to pay himself from such rents and profits the interest of the principal money,—when the term (if any) prescribed for the payment of the mortgage-money has expired, and the mortgagor pays or tenders to the mortgagee the principal money, or deposits it in Court as hereinafter provided.

63. Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

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Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property, the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture, or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, at the same rate of interest.

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor.

Where the mortgage is usufructuary, and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set-off against interest, if any, payable on the money so expended.

64. Where the mortgaged property is a lease for a term of years, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease.

Implied contracts by mortgagor.

65. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee—

(a) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same ;

(b) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto ;

(c) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property.

(d) and, where the mortgaged property is a lease for a term of years, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee, have been paid, performed, and observed down to the commencement of the mortgage ; and that the mortgagor will, so long as the security exists, and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions contained therein, and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts ;

(e) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will, at the proper time, discharge the principal money due on such prior incumbrance.

Nothing in clause (c), or in clause (d), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage.

The benefit of the contracts mentioned in this section shall be annexed to and shall go with the interest of the mortgagee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

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66. A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

• *Rights and Liabilities of Mortgagee.*

67. In the absence of a contract to the contrary, the mortgagee has, at any time after the mortgage-money has become payable to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court an order that the mortgagor shall be absolutely debarred of his right to redeem the property, or an order that the property be sold.

A suit to obtain an order that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure. Nothing in this section shall be deemed—

(a) to authorize a simple mortgagee as such to institute a suit for foreclosure, or an usufructuary mortgagee as such to institute a suit for foreclosure or sale, or a mortgagee by conditional sale as such to institute a suit for sale; or

(b) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or

(c) to authorize the mortgagee of a railway, canal, or other work, in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or

(d) to authorize a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, served their interests under the mortgage.

Right to sue for mortgage-money.

68. The mortgagee has a right to sue the mortgagor for the mortgage-money in the following cases only:—

• (a) where the mortgagor binds himself to repay the same;

(b) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor;

(c) where, the mortgagee being entitled to possession of the property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any other person.

Where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property has been wholly or partially destroyed, or the security is rendered insufficient as defined in section sixty-six, the mortgagee may require the mortgagor to give him, within a reasonable time, another sufficient security for his debt, and, if the mortgagor fails so to do, may sue him for the mortgage-money.

69. A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling, in default of payment of the mortgage-money,

Power of sale when valid.

the mortgaged property, or any part thereof, without the intervention of the Court, is valid in the following cases "and in no others"* (namely)— 1882.
Act 4.

(a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Muhammadan, or Buddhist, "or a member of any other race, sect, tribe, or class from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor-General in Council, in the local official Gazette ; *

(b) where the mortgagee is the Secretary of State for India in Council ;

(c) where the mortgaged property or any part thereof is situate within the towns of Calcutta, Madras, Bombay, Karáchi, or Rangoon.

But no such power shall be exercised unless and until—

(1) notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service ; or

(2) some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised ; but any person damaged by an unauthorized, or improper, or irregular exercise of the power, shall have his remedy in damages against the person exercising the power.

The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances (if any), to which the sale is not made subject, or after payment into Court, under section fifty-seven of a sum to meet any prior incumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges, and expenses properly incurred by him as incident to the sale or any attempted sale ; and, secondly, in discharge of the mortgage-money and costs and other money (if any) due under the mortgage ; and the residue of the money so received shall be paid to the person entitled to the mortgaged property or authorized to give receipts for the proceeds of the sale thereof.

Nothing in the former part of this section applies to powers conferred before this Act comes into force.

The powers and provisions contained in sections six to nineteen (both inclusive) of the Trustees' and Mortgagees' Powers Act, 1866, shall be deemed to apply to English mortgages wherever in British India the mortgaged property may be situate, when neither the mortgagor nor the mortgagee is a Hindú, Muhammadan, or Buddhist, "or a member of any other race, sect, tribe, or class from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor-General in Council, in the local official Gazette." *

70. If, after the date of a mortgage, any accession is made to the mort-

Accession to mortgaged property, the mortgagee, in the absence of property. a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

Illustrations.

(a.) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

* The words quoted have been inserted by Act III. of 1885, s. 5.

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(b) A mortgages a certain plot of building land to B, and afterwards erects a house on the plot. For the purposes of his security, B is entitled to the house as well as the plot.

71. When the mortgaged property is a lease for a term of years, and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

Renewal of mortgaged lease.

72. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he may spend such money as is necessary—

(a) for the due management of the property and the collection of the rents and profits thereof;

(b) for its preservation from destruction, forfeiture, or sale;

(c) for supporting the mortgagor's title to the property;

(d) for making his own title thereto good against the mortgagor; and,

(e) when the mortgaged property is a renewable leasehold, for the renewal of the lease;

and may, in the absence of a contract to the contrary, add such money to the principal money, at the rate of interest payable on the principal, and where no such rate is fixed, at the rate of nine per cent. per annum.

Where the property is by its nature insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property; and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the same rate. But the amount of such insurance shall not exceed the amount specified in this behalf in the mortgage-deed or (if no such amount is therein specified) two-thirds of the amount that would be required in case of total destruction to reinstate the property insured.

Nothing in this section shall be deemed to authorize the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is hereby authorized to insure.

73. Where mortgaged property is sold through failure to pay arrears of revenue or rent due in respect thereof, the mortgagee has a charge on the surplus (if any) of the proceeds, after payment thereout of the said arrears, for the amount remaining due on the mortgage, unless the sale has been occasioned by some default on his part.

74. Any second or other subsequent mortgagee may, at any time after the amount due on the next prior mortgage has become payable, tender such amount to the next prior mortgagee, and such mortgagee is bound to accept such tender and to give a receipt for such amount; and (subject to the provisions of the law for the time being in force regulating the registration of documents) the subsequent mortgagee shall, on obtaining such receipt, acquire, in respect of the property, all the rights and powers of the mortgagee, as such, to whom he has made such tender.

75. Every second or other subsequent mortgagee has, so far as regards redemption, foreclosure, and sale of the mortgaged property, the same rights against the prior mortgagee or mortgagees as his mortgagor has against such prior mortgagee or mortgagees, and the same rights against the subsequent mortgagees (if any) as he has against his mortgagor.

Rights of mesne mortgagee against prior and subsequent mortgagees.

Liabilities of mortgagee in possession.

76. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property—

(a) he must manage the property as a person of ordinary prudence would manage it if it were his own ;

(b) he must use his best endeavours to collect the rents and profits thereof ;

(c) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government-revenue, all other charges of a public nature accruing due in respect thereof during such possession, and any arrears of rent in default of payment of which the property may be summarily sold ;

(d) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (c) and the interest on the principal money ;

(e) he must not commit any act which is destructive or permanently injurious to the property ;

(f) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy, or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money ;

(g) he must keep clear, full, and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported ;

(h) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses mentioned in clauses (c) and (d), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest on the mortgage-money, and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money ; the surplus (if any) shall be paid to the mortgagor ;

(i) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his gross receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of Court, as the case may be.

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this chapter, be debited with the loss (if any) occasioned by such failure.

Loss occasioned by his default.

77. Nothing in section seventy-six, clauses (b), (d), (g), and (h), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal.

Priority.

78. Where, through the fraud, misrepresentation, or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mort-

Postponement of prior mortgagee.

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79. If a mortgage, made to secure future advances, the performance of an engagement, or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

Mortgage to secure uncertain amount when maximum is expressed.

Illustration.

A mortgages Sultānpur to his bankers, B & Co., to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultānpur to C, to secure Rs. 10,000, C having notice of the mortgage to B & Co., and C gives notice to B & Co. of the second mortgage. At the date of the second mortgage, the balance due to B & Co. does not exceed Rs. 5,000. B & Co. subsequently advance to A sums making the balance of the account against him exceed the sum of Rs. 10,000. B & Co. are entitled, to the extent of Rs. 10,000, to priority over C.

80. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security. And, except in the case provided for by section seventy-nine, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Tacking abolished.

Marshalling and Contribution.

81. If the owner of two properties mortgages them both to one person, and then mortgages one of the properties to another person who has not notice of the former mortgage, the second mortgagee is, in the absence of a contract to the contrary, entitled to have the debt of the first mortgagee satisfied out of the property not mortgaged to the second mortgagee so far as such property will extend, but not so as to prejudice the rights of the first mortgagee or of any other person having acquired for valuable consideration an interest in either property.

Marshalling securities.

82. Where several properties, whether of one or several owners, are mortgaged to secure one debt, such properties are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, after deducting from the value of each property the amount of any other incumbrance to which it is subject at the date of the mortgage.

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt, and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section eighty-one to the claim of the second mortgagee.

Deposit in Court.

83. At any time after the principal money has become payable, and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other

Power to deposit in Court money due on mortgage.

person entitled to institute such suit, may deposit, in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

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The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law for the verification of complaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same Court the mortgage-deed if then in his possession or power, apply for and receive the money, and the mortgage-deed so deposited shall be delivered to the mortgagor or such other person as aforesaid.

84. When the mortgagor or such other person as aforesaid has tendered or deposited in Court under section eighty-three the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender, or as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of Court, as the case may be.

Nothing in this section or in section eighty-three shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money.

Suits for Foreclosure, Sale, or Redemption.

85. Subject to the provisions of the Code of Civil Procedure, section 437, all persons having an interest in the property comprised in a mortgage must be joined as parties to any suit under this chapter relating to such mortgage: Provided that the plaintiff has notice of such interest.

Foreclosure and Sale.

86. In a suit for foreclosure, if the plaintiff succeeds, the Court shall make a decree, ordering that an account be taken of what will be due to the plaintiff for principal and interest on the mortgage, and for his costs of the suit (if any) awarded to him, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree,

and ordering that, upon the defendant paying to the plaintiff or into Court the amount so due, on a day within six months from the date of declaring in Court the amount so due, to be fixed by the Court, the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall transfer the property to the defendant free from all encumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims; and shall, if necessary, put the defendant into possession of the property; but

that, if the payment is not made on or before the day to be fixed by the Court, the defendant shall be absolutely debarred of all right to redeem the property.

87. If payment is made of such amount and of such subsequent costs as are mentioned in section ninety-four, the defendant shall (if necessary) be put into possession of the mortgaged property.

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If such payment is not so made, the plaintiff may apply to the Court for an order that the defendant and all persons claiming through or under him be debarred absolutely of all right to redeem the mortgaged property, and the Court shall then pass such order, and may, if necessary, deliver possession of the property to the plaintiff:

Provided that the Court may, upon good cause shewn, and upon such terms (if any) as it thinks fit, from time to time postpone the day appointed for such payment.

On the passing of an order under the second paragraph of this section the debt secured by the mortgage shall be deemed to be discharged.

In the Code of Civil Procedure, Schedule IV., No. 129, for the words "Final decree," the words "Decree absolute" shall be substituted.

88. In a suit for sale, if the plaintiff succeeds, the Court shall pass a decree to the effect mentioned in the first and second paragraphs of section eighty-six, and also ordering that, in default of the defendant paying, as therein mentioned, the mortgaged property, or a sufficient part thereof, be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is so found due to the plaintiff, and that the balance (if any) be paid to the defendant or other persons entitled to receive the same.

In a suit for foreclosure, if the plaintiff succeeds, and the mortgage is not a mortgage by conditional sale, the Court may, at the instance of the plaintiff, or of any person interested either in the mortgage-money or in the right of redemption, if it thinks fit, pass a like decree (in lieu of a decree for foreclosure on such terms as it thinks fit, including, if it thinks fit, the deposit in Court of a reasonable sum, fixed by the Court, to meet the expenses of sale and to secure the performance of the terms).

89. If in any case under section eighty-eight the defendant pays to the plaintiff or into Court on the day fixed as aforesaid the amount due under the mortgage, the costs (if any) awarded to him and such subsequent costs as are mentioned in section ninety-four, the defendant shall (if necessary) be put in possession of the mortgaged property; but if such payment is not so made, the plaintiff or the defendant, as the case may be, may apply to the Court for an order

absolute for sale of the mortgaged property, and the Court shall then pass an order that such property, or a sufficient part thereof, be sold, and that the proceeds of the sale be dealt with as is mentioned in section eighty-eight; and thereupon the defendant's right to redeem and the security shall both be extinguished.

90. When the net proceeds of any such sale are insufficient to pay the amount due for the time being on the mortgage, if the balance is legally recoverable from the defendant otherwise than out of the property sold, the Court may pass a decree for such sum.

Redemption.

91. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property:—

(a) any person (other than the mortgagee of the interest sought to be redeemed) having any interest in or charge upon the property;

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(b) any person having any interest in, or charge upon, the right to redeem the property ;

(c) any surety for the payment of the mortgage-debt or any part thereof ;

(d) the guardian of the property of a minor mortgagor on behalf of such minor ;

(e) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot ;

(f) the judgment-creditor of the mortgagor, when he has obtained execution by attachment of the mortgagor's interest in the property ;

(g) a creditor of the mortgagor who has, in a suit for the administration of his estate, obtained a decree for sale of the mortgaged property.

Decree in redemption-suit. 92. In a suit for redemption, if the plaintiff succeeds, the Court shall pass a decree ordering—

that an account be taken of what will be due to the defendant for the mortgage-money and for his costs of the suit (if any) awarded to him, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree ;

that, upon the plaintiff paying to the defendant or into Court the amount so due on a day within six months from the date of declaring in Court the amount so due, to be fixed by the Court, the defendant shall deliver up to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall re-transfer it to the plaintiff free from the mortgage, and from all incumbrances created by the defendant or any person claiming under him, or, when the defendant claims by derived title, by those under whom he claims, and shall, if necessary, put the plaintiff into possession of the mortgaged property ; and

that, if such payment is not made on or before the day to be fixed by the Court, the plaintiff shall (unless the mortgage be simple or usufructuary) be absolutely debarred of all right to redeem the property, or (unless the mortgage be by conditional sale) that the property be sold.

93. If payment is made of such amount and of such subsequent costs as are mentioned in section ninety-four, the plaintiff shall, if necessary, be put into possession of the mortgaged property.

If such payment is not so made the defendant may (unless the mortgage is simple or usufructuary) apply to the Court for an order that the plaintiff and all persons claiming through or under him be debarred absolutely of all right to redeem, or (unless the mortgage is by conditional sale) for an order that the mortgaged property be sold.

If he applies for the former order, the Court shall pass an order that the plaintiff and all persons claiming through or under him be absolutely debarred of all right to redeem the mortgaged property; and may, if necessary, deliver possession of the property to the defendant.

If he applies for the latter order, the Court shall pass an order that such property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and that the balance be paid to the plaintiff or other persons entitled to receive the same.

On the passing of any order under this section the plaintiff's right to redeem and the security shall, as regards the property affected by the order, both be extinguished :

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Provided that the Court may, upon good cause shown, and upon such terms (if any) as it think fit, from time to time postpone the day fixed under section ninety-two for payment to the defendant.

94. In finally adjusting the amount to be paid to a mortgagee in case of a redemption or a sale by the Court under this chapter, the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage-money such costs of suit as have been properly incurred by him since the decree for foreclosure, redemption, or sale up to the time of actual payment.

95. Where one of several mortgagors redeems the mortgaged property, and obtains possession thereof, he has a charge on the share of each of the other co-mortgagors in the property for his proportion of the expenses properly incurred in so redeeming and obtaining possession.

Sale of Property subject to prior Mortgage.

96. If any property the sale of which is directed under this chapter is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, order that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

Application of proceeds.

97. Such proceeds shall be brought into Court and applied as follows:—
first, in payment of all expenses incident to the sale or properly incurred in any attempted sale;
secondly, if the property has been sold free from any prior mortgage, in payment of whatever is due on account of such mortgage;
thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made;
fourthly, in payment of the principal money due on account of that mortgage; and
lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or, if there be more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

Nothing in this section or in section ninety-six shall be deemed to affect the powers conferred by section fifty-seven.

Anomalous Mortgages.

98. In the case of a mortgage, not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, or an English mortgage, or a combination of the first and third, or the second and third, of such forms, the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage.

Attachment of Mortgaged Property.

99. Where a mortgagee in execution of a decree for the satisfaction of any claim, whether arising under the mortgage or not, attaches the mortgaged property, he shall not

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be entitled to bring such property to sale otherwise than by instituting a suit under section sixty-seven, and he may institute such suit notwithstanding anything contained in the Code of Civil Procedure, section. 43.

Charges.

100. Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections eighty-one and eighty-two and all the provisions hereinbefore contained as to a mortgagee instituting a suit for the sale of the mortgaged property shall, so far as may be, apply to the person having such charge.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust.

101. Where the owner of a charge or other incumbrance on immoveable property is or becomes absolutely entitled to that property, the charge or incumbrance shall be extinguished, unless he declares, by express words or necessary implication, that it shall continue to subsist, or such continuance would be for his benefit.

Notice and Tender.

102. Where the person on or to whom any notice or tender is to be served or made under this chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power-of-attorney from such person or otherwise duly authorized to accept such service or tender shall be deemed sufficient.

Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient.

Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown to the person desiring to make the tender, the latter person may deposit in such Court as last aforesaid the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

103. Where, under the provisions of this chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of Court by, any person incompetent to contract, such notice may be served, or tender or deposit made, accepted, or taken by the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions of this chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he

1882. were competent to contract ; and the provisions of Chapter XXXI. of the Code of Civil Procedure shall, so far as may be, apply to such application,
 Act 4. and to the parties thereto, and to the guardian appointed thereunder.

104. The High Court may, from time to time, make rules consistent with this Act for carrying out in itself, and in the Courts of Civil Judicature subject to its superintendence, the provisions contained in this chapter.

Power to make rules.

CHAPTER V.

OF LEASES OF IMMOVEABLE PROPERTY.

105. A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service, or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lease defined.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service, or other thing to be so rendered, is called the rent.

Lessor, lessee, premium, and rent defined.

106. In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy ; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Duration of certain leases in absence of written contract or local usage.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and tendered or delivered either personally to the party who is intended to be bound by it, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

107. A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

Leases how made.

All other leases of immoveable property may be made either by an instrument or by oral agreement.

108. In the absence of a contract or local usage to the contrary, the rights and liabilities of lessor and the lessee of immoveable property, as against one another respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased :—

Rights and liabilities of lessor and lessee.

A.—Rights and Liabilities of the Lessor.

(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, or of which the former is and the latter is not aware, and which the latter could not with ordinary care discover :

(b) the lessor is bound on the lessee's request to put him in possession of the property : 1882.

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease, and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption. Act 4.

The benefit of such contract shall be annexed to, and go with, the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

B.—Rights and Liabilities of the Lessee. •

(d) If, during the continuance of the lease, any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease :

(e) if, by fire, tempest, or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void :

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor :

(g) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor :

(h) the lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth ; provided he leaves the property in the state in which he received it :

(i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them :

(j) the lessee may transfer absolutely, or by way of mortgage or sub-lease, the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease :

Nothing in this clause shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer, or lessee :

(k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest :

(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf :

(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he

1882. was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof, and give or leave notice of any defect in such condition ; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left :

Act 4.

(n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor :

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own ; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell timber, pull down or damage buildings, work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto :

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes :

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

109. If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it ; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him :

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee, and the lessee, may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

110. Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

Determination of lease.

111. A lease of immoveable property deter- **1882.**

mines—

Act 4.

(a) by efflux of the time limited thereby :

(b) where such time is limited conditionally on the happening of some event—by the happening of such event :

(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event :

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right :

(e) by express surrender ; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them :

(f) by implied surrender :

(g) by forfeiture ; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter, or the lease shall become void ; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself ; and in either case the lessor or his transferee does some act showing his intention to determine the lease :

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f).

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

112. A forfeiture under section one hundred and eleven, clause (g),

Waiver of forfeiture.

is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting :

Provided that the lessor is aware that the forfeiture has been incurred :

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

113. A notice given under section one hundred and eleven, clause (h),

Waiver of notice to quit.

is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting

Illustrations.

(a.) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b.) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

114. Where a lease of immoveable property has determined by forfeiture

Relief against forfeiture for non-payment of rent.

for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may,

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Act 4.

in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture ; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

115. The surrender, express or implied, of a lease of immoveable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease ; but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor.

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by the lessor in fraud of the under-lessees, or relief against the forfeiture is granted under section one hundred and fourteen.

116. If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section one hundred and six.

Illustrations.

(a.) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house, and pays the rent to A. C's lease is renewed from month to month.

(b.) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

117. None of the provisions of this chapter apply to leases for agricultural purposes, except in so far as the Local Government, with the previous sanction of the Governor-General in Council, may, by notification published in the local official Gazette, declare all or any of such provisions to be so applicable, together with, or subject to, those of the local law (if any) for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

CHAPTER VI.

OF EXCHANGES.

118. When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange."

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

119. In the absence of a contract to the contrary, the party deprived of the thing or part thereof he has received in exchange, by reason of any defect in the title of the other party, is entitled at his option to compensation or to the return of the thing transferred by him.

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120. Save as otherwise provided in this chapter, each party has the rights and liabilities of parties. Rights and liabilities of parties. as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.

Exchange of money.

121. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

CHAPTER VII.

OF GIFTS.

122. "Gift" is the transfer of certain existing moveable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made. Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void.

123. For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

Transfer how effected.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

Gift to existing and future property.

124. A gift comprising both existing and future property is void as to the latter.

125. A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

Gift to several, of whom one does not accept.

126. The donor and donee may agree that, on the happening of any specified event which does not depend on the will of the donor, a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part at the mere will of the donor is void wholly or in part, as the case may be.

When gift may be suspended or revoked.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations.

(a.) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(b.) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds good as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

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127. Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the

donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

A donee not competent to contract, and accepting property burdened by

Onerous gift to disqualified person. any obligation, is not bound by his acceptance. But if, after becoming competent to contract, and

being aware of the obligation, he retains the property given, he becomes so bound.

Illustrations.

(a.) A has shares in X, a prosperous joint-stock company, and also shares in Y a joint-stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint-stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(b.) A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by this refusal forfeit the money.

128. Subject to the provisions of section one hundred and twenty-seven,

Universal donee. where a gift consists of the donor's whole property, the donee is personally liable for all the debts due

by the donor at the time of the gift to the extent of the property comprised therein.

129. Nothing in this chapter relates to gifts of moveable property made

Saving of donations *mortis causa* and Muhammadan law. in contemplation of death, or shall be deemed to affect any rule of Muhammadan law, or, save as provided by section one hundred and twenty-three, any rule of Hindû or Buddhist law.

CHAPTER VIII.

OF TRANSFERS OF ACTIONABLE CLAIMS.

130. A claim which the Civil Courts recognise as affording grounds

Actionable claim. for relief is actionable whether a suit for its enforcement is or is not actually pending or likely to become necessary.

131. No transfer of any debt or any beneficial interest in moveable

Transfer of debts. property shall have any operation against the debtor, or against the person in whom the property is

vested, until express notice of the transfer is given to him, unless he is a party to or otherwise aware of such transfer; and every dealing by such debtor or person, not being a party to or otherwise aware of, and not having received express notice of, a transfer, with the debt or property, shall be valid as against such transfer.

Illustration.

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A owes money to B, who transfers the debt to C. B then demands the debt from A, who, having no notice of the transfer, pays B. The payment is valid, and C cannot sue A for the debt.

132. Every such notice must be in writing signed by the person making Notice to be in writing the transfer, or by his agent duly authorized in signed. this behalf.

133. On receiving such notice, the debtor or person in whom the pro- Debtor to give effect to perty is vested shall give effect to the transfer transfer. unless where the debtor resides, or the property is situate, in a foreign country, and the title of the person in whose favour the transfer is made is not complete according to the law of such country.

134. Where the transferor of a debt warrants the solvency of the Warranty of solvency of debtor, the warranty, in the absence of a contract debtor. to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

135. Where an actionable claim is sold, he against whom it is made is Discharge of person against wholly discharged by paying to the buyer the price whom claim is sold. and incidental expenses of the sale, with interest on the price from the day that the buyer paid it.

Nothing in the former part of this section applies—

(a) where the sale is made to the co-heir to, or co-proprietor of, the claim sold ;

(b) where it is made to a creditor in payment of what is due to him ;

(c) where it is made to the possessor of a property subject to the actionable claim.

(d) where the judgment of a competent Court has been delivered affirming the claim, or where the claim has been made clear by evidence, and is ready for judgment.

136. No Judge, pleader, mukhtár, clerk, bailiff, or other officer connected Incapacity of officers con- with Courts of justice, can buy any actionable nected with Courts of justice. claim falling under the jurisdiction of the Court in which he exercises his functions.

137. The person to whom a debt or charge is transferred shall take it Liability of transferee of subject to all the liabilities to which the transferor was subject in respect thereof at the date of the debt. transfer.

Illustration.

A debenture is issued in fraud of a public company to A. A sells and transfers the debenture to B, who has no notice of the fraud. The debenture is invalid in the hands of B.

138. When a debt is transferred for the purpose of securing an existing Mortgaged debt. or future debt, the debt so transferred, if recovered by either the transferor or transferee, is applicable, first, in payment of the costs of such recovery ; secondly, in or towards satisfaction of the amount for the time being secured by the transfer ; and the residue (if any) belongs to the transferor.

Saving of negotiable instru- ments.

139. Nothing in this chapter applies to negotiable instruments.

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THE SCHEDULE—(a.) STATUTES.

Act 4.

Year and chapter.	Subject.	Extent of repeal.
27 Hen. VIII., c. 10...	Uses	The whole.
13 Eliz., c. 5	Fraudulent conveyances ...	The whole.
27 Eliz., c. 4	Fraudulent conveyances ...	The whole.
4 Wm. & Mary, c. 16.	Clandestine mortgages ...	The whole.

(b.) ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
IX. of 1842 ...	Lease and release ...	The whole.
XXXI. of 1854 ...	Modes of conveying land ...	Section 17.
XI. of 1855 ...	Mesne profits and improvements.	Section 1; in the title, the words "to mesne profits and," and in the preamble "to limit the liability for mesne profits and."
XXVII. of 1866 ...	Indian Trustee Act ...	Section 31.
IV. of 1872 ...	Panjab Laws Act ...	So far as it relates to Bengal Regulations I. of 1798 and XVII. of 1806.
XX. of 1875 ...	Central Provinces Laws Act...	So far as it relates to Bengal Regulations I. of 1798 and XVII. of 1806.
XVIII. of 1876 ...	Oudh Laws Act ...	So far as it relates to Bengal Regulation XVII. of 1806.
I. of 1877 ...	Specific Relief ...	In section 35 and 36, the words "in writing."

(c.) REGULATIONS.

Number and year.	Subject.	Extent of repeal.
Bengal Regulation I. of 1798.	Conditional sales... ..	The whole Regulation.
Bengal Regulation XVII. of 1806.	Redemption	The whole Regulation.
Bombay Regulation V. of 1827.	Acknowledgment of debts: Interest: Mortgagees in possession.	Section 15.

THE INDIAN TRUSTS ACT, NO. II. OF 1882.

RECEIVED THE G.-G.'s ASSENT ON THE 13TH JANUARY 1882.

An Act to define and amend the law relating to Private Trusts and Trustees.

WHEREAS it is expedient to define and amend the law relating to private trusts and trustees; It is hereby enacted as follows :—

Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Indian Trusts Act, 1882:" and it shall come into force on the first day of March 1882.

Short title.

Commencement.

It extends in the first instance to the territories respectively administered by the Governor of Madras in Council, the Lieutenant-Governors of the North-Western Provinces and the Panjáb, the Chief Commissioners of Oudh, the Central Provinces, Coorg, and Assam; and the Local Government may, from time to time, by notification in the official Gazette, extend it to any other part of British India. But nothing herein contained affects the rules of Muhammadan law as to *waqf*, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or applies to public or private religious or charitable endowments, or to trusts to distribute prizes taken in war among the captors; and nothing in the second chapter of this Act applies to trusts created before the said day.

Local extent.

Savings.

2. The Statute and Acts mentioned in the schedule hereto annexed shall, to the extent mentioned in the said schedule, be repealed in the territories to which this Act for the time being extends.

Repeal of enactments.

3. A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner :

Interpretation-clause.

"trusts :"

the person who reposes or declares the confidence is called the "author

"author of the trust :"

"trustee :"

"beneficiary :"

"trust-property :"

"beneficial interest :"

is his right against the trustee as owner of the trust-property; and the instrument (if any) by which the trust is declared is called the "instrument of trust :"

"instrument of trust :"

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Act 2.

a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust."

and in this Act, unless there be something repugnant in the subject or context, "registered" means registered under the law for the registration of documents for the time being in force: a person is said to have "notice" of a fact either when he actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Indian Contract Act, 1872, s. 229; and all expressions used herein, and defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively attributed to them by that Act.

Expressions defined in Act 1872, s. 229; and all expressions used herein, IX. of 1872.

and defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively attributed to them by that Act.

CHAPTER II.

OF THE CREATION OF TRUSTS.

4. A trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is (a) forbidden by law, or (b) is of such a nature that, if permitted, it would defeat the provisions of any law, or (c) is fraudulent, or (d) involves or implies injury to the person or property of another, or (e) the Court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

Explanation.—In this section, the expression "law" includes, where the trust-property is immovable and situate in a foreign country, the law of such country.

Illustrations.

(a.) A conveys property to B in trust to apply the profits to the nurture of female foundlings to be trained up as prostitutes. The trust is void.

(b.) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support A's children. The trust is void.

(c.) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death for B. A is declared an insolvent. The trust for A is invalid as against his creditors.

5. No trust in relation to immovable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.

No trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

These rules do not apply where they would operate so as to effectuate a fraud.

6. Subject to the provisions of section five, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (a) an intention on his part to create thereby a trust, (b) the purpose of the trust, (c) the beneficiary

and (d) the trust-property, and (unless the trust is declared by will, or the author of the trust is himself to be the trustee) transfers the trust-property to the trustee.

1882.

Act 2.

Illustrations.

(a.) A bequeaths certain property to B, "having the fullest confidence that he will dispose of it for the benefit of" C. This creates a trust so far as regards A and C.

(b.) A bequeaths certain property to B, "hoping he will continue it in the family." This does not create a trust, as the beneficiary is not indicated with reasonable certainty.

(c.) A bequeaths certain property to B, requesting him to distribute it amongst such members of C's family as B should think most deserving. This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.

(d.) A bequeaths certain property to B, desiring him to divide the bulk of it among C's children. This does not create a trust, for the trust-property is not indicated with sufficient certainty.

(e.) A bequeaths a shop and stock-in-trade to B, on condition that he pays A's debts and a legacy to C. This is a condition, not a trust for A's creditors and C.

Who may create trusts.

• 7. A trust may be created—

(a) by every person competent to contract, and,

(b) with the permission of a principal Civil Court of original jurisdiction, by, or on behalf of a minor ;

but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust-property.

Subject of trust.

8. The subject-matter of a trust must be property transferable to the beneficiary.

It must not be a merely beneficial interest under a subsisting trust.

Who may be beneficiary.

9. Every person capable of holding property may be a beneficiary.

A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up with notice of the trust, a claim inconsistent therewith.

Disclaimer by beneficiary.

10. Every person capable of holding property may be a trustee ; but where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract.

Who may be trustee.

No one bound to accept trust.

No one is bound to accept a trust.

Acceptance of trust.

A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust-property from vesting in him.

Disclaimer of trust.

A disclaimer by one of two or more co-trustees vests the trust-property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust.

Illustrations.

(a.) A bequeaths certain property to B and C, his executors, as trustees for D. B and C prove A's will. This is in itself an acceptance of the trust, and B and C hold the property in trust for D.

(b.) A transfers certain property to B in trust to sell it, and to pay, out of the proceeds, A's debts. B accepts the trust, and sells the property. So far as regards B, a trust of the proceeds is created for A's creditors.

(c.) A bequeaths a l  kh of rupees to B upon certain trusts, and appoints him his executor. B severs the l  kh from the general assets, and appropriates it to the specific purpose. This is an acceptance of the trust.

CHAPTER III.

OF THE DUTIES AND LIABILITIES OF TRUSTEES.

11. The trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract.

Trustee to execute trust.

Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by a principal Civil Court of original jurisdiction.

Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal, or manifestly injurious to the beneficiaries.

Explanation.—Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be (a) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust, or, when such instrument is a will, at the date of his death, and (b) in the case of debts not bearing interest, to make such payment without interest.

Illustrations.

(a.) A, a trustee, is simply authorized to sell certain land by public auction. He cannot sell the land by private contract.

(b.) A, a trustee of certain land for X, Y, and Z, is authorized to sell the land to B for a specified sum. X, Y, and Z, being competent to contract, consent that A may sell the land to C for a less sum. A may sell the land accordingly.

(c.) A, a trustee for B and her children, is directed by the author of the trust to lend, on B's request, trust-property to B's husband, C, on the security of his bond. C becomes insolvent, and B requests A to make the loan. A may refuse to make it.

12. A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust-property, to obtain, where necessary, a transfer of the trust-property to himself; and (subject to the provisions of the instrument of trust) to get in trust-moneys invested on insufficient or hazardous security.

Trustee to inform himself of state of trust-property.

Illustrations.

(a.) The trust-property is a debt outstanding on personal security. The instrument of trust gives the trustee no discretionary power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay.

(b.) The trust-property is money in the hands of one of two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required.

13. A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust-property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto.

Trustee to protect title to trust-property.

Illustration.

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The trust-property is immoveable property which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the Indian Registration Act, 1877, the trustee's duty is to cause the instrument to be registered.

14 The trustee must not, for himself or another, set-up or aid any title

Trustee not to set-up title to the trust-property adverse to the interest of the adverse to beneficiary. beneficiary.

15 A trustee is bound to deal with the trust property as carefully as a

Care required from trustee. man of ordinary prudence would deal with such property if it were his own; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction, or deterioration of the trust-property.

Illustrations.

(a.) A, living in Calcutta, is a trustee for B, living in Bombay. A remits trust-funds to B by bills drawn by a person of undoubted credit in favour of the trustee as such, and payable at Bombay. The bills are dishonoured. A is not bound to make good the loss.

(b.) A, a trustee of leasehold property, directs the tenant to pay the rents on account of the trust to a banker, B, then in credit. The rents are accordingly paid to B, and A leaves the money with B only till wanted. Before the money is drawn out, B becomes insolvent. A, having had no reason to believe that B was in insolvent circumstances, is not bound to make good the loss.

(c.) A, a trustee of two debts for B, releases one, and compounds the other, in good faith, and reasonably believing that it is for B's interest to do so. A is not bound to make good any loss caused thereby to B.

(d.) A, a trustee directed to sell the trust-property by auction, sells the same, but does not advertise the sale, and otherwise fails in reasonable diligence in inviting competition. A is bound to make good the loss caused thereby to the beneficiary.

(e.) A, a trustee for B, in execution of his trust, sells the trust-property, but from want of due diligence on his part fails to receive part of the purchase-money. A is bound to make good the loss thereby caused to B.

(f.) A, a trustee for B of a policy of insurance, has funds in hand for payment of the premiums. A neglects to pay the premiums, and the policy is consequently forfeited. A is bound to make good the loss to B.

(g.) A bequeaths certain moneys to B and C as trustees, and authorizes them to continue trust-moneys upon the personal security of a certain firm in which A had himself invested them. A dies, and a change takes place in the firm. B and C must not permit the moneys to remain upon the personal security of the new firm.

(h.) A, a trustee for B, allows the trust to be executed solely by his co-trustee, C. C misapplies the trust-property. A is personally answerable for the loss resulting to B.

16 Where the trust is created for the benefit of several persons in

Conversion of perishable succession, and the trust-property is of a wasting property. nature or a future or reversionary interest, the trustee is bound, unless an intention to the contrary may be inferred from the instrument of trust, to convert the property into property of a permanent and immediately profitable character.

Illustrations.

(a.) A bequeaths to B all his property in trust for C during his life, and on his death for D, and on D's death for E. A's property consists of three leasehold houses, and there is nothing in A's will to show that he intended the houses to be enjoyed in specie. B should sell the houses, and invest the proceeds in accordance with section twenty.

(b.) A bequeaths to B his three leasehold houses in Calcutta and all the furniture therein in trust for C during his life, and on his death for D, and on D's death for E. Here an intention that the houses and furniture should be enjoyed in specie appears clearly, and B should not sell them.

1882.

Act 2.

17. Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another.

Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the Court to control the exercise reasonably and in good faith of such discretion.

Illustration.

A, a trustee for B, C, and D, is empowered to choose between several specified modes of investing the trust-property. A in good faith chooses one of these modes. The Court will not interfere, although the result of the choice may be to vary the relative rights of B, C, and D.

18. Where the trust is created for the benefit of several persons in succession, and one of them is in possession of the trust-property, if he commits, or threatens to commit, any act which is destructive or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

19. A trustee is bound (a) to keep clear and accurate accounts of the trust-property, and (b), at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust-property.

20. Where the trust-property consists of money, and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others :—

(a) in promissory notes, debentures, stock, or other securities of the Government of India, or of the United Kingdom of Great Britain and Ireland ;

(b) in bonds, debentures, and annuities charged by the Imperial Parliament on the revenues of India ;

(c) in stock or debentures of, or shares in, Railway or other Companies, the interest whereon shall have been guaranteed by the Secretary of State for India in Council ;

(d) in debentures or other securities for money issued by, or on behalf of, any municipal body under the authority of any Act of a legislature established in British India ;

(e) on a first mortgage of immoveable property situate in British India : Provided that the property is not a leasehold for a term of years, and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the mortgage-money ; or

(f) on any other security expressly authorized by the instrument of trust, or by any rule which the High Court may, from time to time, prescribe in this behalf :

Provided that, where there is a person competent to contract, and entitled in possession to receive the income of the trust-property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (d), (e), and (f), shall be made without his consent in writing.

21. Nothing in section twenty shall apply to investments made before this Act comes into force, or shall be deemed to preclude an investment on a mortgage of immoveable property already pledged as security for an

Mortgage of land pledged to Government under Act XXVI. of 1871.

advance under the Land Improvement Act, 1871, or, in case the trust-money does not exceed three thousand rupees, a deposit thereof in a Government Savings Bank.

1882.
Act 2.

22. Where a trustee directed to sell within a specified time extends such time, the burden of proving, as between himself and the beneficiary, that the latter is not prejudiced by the extension, lies upon the trustee, unless the extension has been authorized by a principal Civil Court of original jurisdiction.

Illustration.

A bequeaths property to B, directing him, with all convenient speed and within five years, to sell it, and apply the proceeds for the benefit of C. In the exercise of reasonable discretion, B postpones the sale for six years. The sale is not thereby rendered invalid, but C, alleging that he has been injured by the postponement, institutes a suit against B to obtain compensation. In such suit the burden of proving that C has not been injured lies on B.

23. Where the trustee commits a breach of trust, he is liable to make good the loss which the trust-property or the beneficiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of the facts of the case and of his rights as against the trustee.

A trustee committing a breach of trust is not liable to pay interest except in the following cases :—

- (a) where he has actually received interest :
- (b) where the breach consists in unreasonable delay in paying trust-money to the beneficiary :
- (c) where the trustee ought to have received interest, but has not done so :
- (d) where he may be fairly presumed to have received interest.

He is liable, in case (a), to account for the interest actually received, and, in cases (b), (c), and (d), to account for simple interest at the rate of six per cent. per annum, unless the Court otherwise directs.

(e) Where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half-yearly rests) at the same rate.

(f) Where the breach consists in the employment of trust-property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate, or for the nett profits made by such employment.

Illustrations.

(a.) A trustee improperly leaves trust-property outstanding, and it is consequently lost : he is liable to make good the property lost, but he is not liable to pay interest thereon.

(b.) A bequeaths a house to B in trust to sell it and pay the proceeds to C. B neglects to sell the house for a great length of time, whereby the house is deteriorated, and its market-price falls. B is answerable to C for the loss.

(c.) A trustee is guilty of unreasonable delay in investing trust-money in accordance with section twenty, or in paying it to the beneficiary. The trustee is liable to pay interest thereon for the period of the delay.

(d.) The duty of the trustee is to invest trust-money in any of the securities mentioned in section twenty, clause (a), (b), (c), or (d). Instead of so doing, he

1882. retains the money in his hands. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, and the intermediate dividends and interest thereon.

Act 2.

(e.) The instrument of trust directs the trustee to invest trust-money either in any of such securities or on mortgage of immoveable property. The trustee does neither. He is liable for the principal money and interest.

(f.) The instrument of trust directs the trustee to invest trust-money in any of such securities, and to accumulate the dividends thereon. The trustee disregards the direction. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends.

(g.) Trust-property is invested in one of the securities mentioned in section twenty, clause (a), (b), or (d). The trustee sells such security for some purpose not authorized by the terms of the instrument of trust. He is liable, at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon.

(h.) The trust-property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust. The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

24. A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust-property cannot set-off against his liability a gain which has accrued to another portion of the trust-property through another and distinct breach of trust.

No set-off allowed to trustee.
Non-liability for predecessor's default.

25. Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessors.

26. Subject to the provisions of sections thirteen and fifteen, one trustee is not, as such, liable for a breach of trust committed by his co-trustee:

Non-liability for co-trustee's default.

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

(a) where he has delivered trust-property to his co-trustee without seeing to its proper application:

(b) where he allows his co-trustee to receive trust-property and fails to make due enquiry as to the co-trustee's dealings therewith, or allows him to retain it longer than the circumstances of the case reasonably require:

(c) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it, or does not, within a reasonable time, take proper steps to protect the beneficiary's interest.

A co-trustee who joins in signing a receipt for trust-property, and proves that he has not received the same, is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

Illustration.

A bequeaths certain property to B and C, and directs them to sell it and invest the proceeds for the benefit of D. B and C accordingly sell the property, and the purchase-money is received by B and retained in his hands. C pays no attention to the matter for two years, and then calls on B to make the investment. B is unable to do so, becomes insolvent, and the purchase-money is lost. C may be compelled to make good the amount.

1882.

Act 2.

27. Where co-trustees jointly commit a breach of trust, or where one of them by his neglect enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

But as between the trustees themselves, if one be less guilty than another, and has had to refund the loss, the former may compel the latter, or his legal representative to the extent of the assets he had received, to make good such loss; and if all be equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute.

Nothing in this section shall be deemed to authorize a trustee who has been guilty of fraud to institute a suit to compel contribution.

28. When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust-property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered.

29. When the beneficiary's interest is forfeited or awarded by legal adjudication to Government, the trustee is bound to hold the trust-property to the extent of such interest for the benefit of such person in such manner as the Government may direct in this behalf.

30. Subject to the provisions of the instrument of trust and of sections twenty-three and twenty-six, trustees shall be respectively chargeable only for such moneys, stocks, funds, and securities as they respectively actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker, or other person in whose hands any trust-property may be placed, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor otherwise for involuntary losses.

OF THE RIGHTS AND POWERS OF TRUSTEES.

31. A trustee is entitled to have, in his possession the instrument of trust and all the documents of title (if any) relating solely to the trust property.

32. Every trustee may reimburse himself, or pay or discharge out of the trust-property, all expenses properly incurred in or about the execution of the trust, or the realization, preservation, or benefit of the trust-property, or the protection or support of the beneficiary.

If he pays such expenses out of his own pocket, he has a first charge upon the trust-property for such expenses and interest thereon; but such charge (unless the expenses have been incurred with the sanction of a principal Civil Court of original jurisdiction) shall be enforced only by prohibiting any disposition of the trust-property without previous payment of such expenses and interest.

If the trust-property fail, the trustee is entitled to recover from the beneficiary personally on whose behalf he acted, and at whose request, expressed or implied, he made the payment, the amount of such expenses.

Where a trustee has, by mistake, made an over-payment to the beneficiary, he may reimburse the trust-property out of the beneficiary's interest. If such interest fail, the trustee is entitled to recover from the beneficiary personally the amount of such over-payment.

1882.

Act 2.

33. A person other than a trustee who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach; and where he is a beneficiary, the trustee has a charge on his interest for such amount.

Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud.

34. Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice, or direction on any present questions respecting the management or administration of the trust-property, other than questions of detail, difficulty, or importance not proper in the opinion of the Court for summary disposal.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition, and acting upon the opinion, advice, or direction given by the Court, shall be deemed, so far as regards his own responsibility, to have discharged his duties as such trustee in the subject-matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made.

35. When the duties of a trustee, as such, are completed, he is entitled to have the accounts of his administration of the trust-property examined and settled; and, where nothing is due to the beneficiary under the trust, to an acknowledgement in writing to that effect.

36. In addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions (if any) contained in such instrument, and to the provisions of section seventeen, a trustee may do all acts which are reasonable and proper for the realization, protection, or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract.

Every trustee in the actual possession or receipt of the rents and profits of land as defined in the Land Improvement Act, 1871, shall, for the purposes of that Act, be deemed to be a landlord in possession.

Except with the permission of a principal Civil Court of original jurisdiction, no trustee shall lease trust-property for a term exceeding twenty-one years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained.

37. Where the trustee is empowered to sell any trust-property, he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs.

38. The trustee making any such sale may, insert such reasonable stipulations either as to title or evidence of title, or otherwise, in any condition of sale or contract for sale, as he thinks fit; and may also buy-in the property, or any part thereof, at any sale by auction, and rescind or vary any contract for sale, and re-sell the property so bought in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby.

Where a trustee is directed to sell trust-property or to invest trust-property in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

1882.

Act 2.

Illustrations.

(a.) A bequeaths property to B, directing him to sell it with all convenient speed, and pay the proceeds to C. This does not render an immediate sale imperative.

(b.) A bequeaths property to B, directing him to sell it at such time and in such manner as he shall think fit, and invest the proceeds for the benefit of C. This does not authorize B, as between him and C, to postpone the sale to an indefinite period.

39. For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

Power to convey.

40. A trustee may, at his discretion, call in any trust-property invested in any security, and invest the same on any of the securities mentioned or referred to in section

Power to vary investments.

twenty, and from time to time vary any such investments for others of the same nature :

Provided that, where there is a person competent to contract, and entitled at the time to receive the income of the trust-property for his life, or for any greater estate, no such change of investment shall be made without his consent in writing.

41. Where any property is held by a trustee in trust for a minor, such

trustee may, at his discretion, pay to the guardians of minors, &c., for their maintenance, &c. (if any) of such minor, or otherwise apply for or towards his maintenance or education or advancement

in life, or the reasonable expenses of his religious worship, marriage, or funeral, the whole or any part of the income to which he may be entitled in respect of such property ; and such trustee shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section twenty, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen : Provided that such trustee may, at any time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

Where the income of the trust-property is insufficient for the minor's maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage, or funeral, the trustee may, with the permission of a principal Civil Court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement, or expenses.

Nothing in this section shall be deemed to affect the provision of any local law for the time being in force relating to the persons and property of minors.

42. Any trustees or trustee may give a receipt in writing for any

Power to give receipts.

money, securities, or other moveable property payable, transferable, or deliverable to them or him by reason, or in the exercise, of any trust or power ; and, in the absence of fraud, such receipt shall discharge the person paying, transferring, or delivering the same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

1882.

Act 2.

Power to compound, &c.

43. Two or more trustees acting together may, if and as they think fit—

(a) accept any composition or any security for any debt or for any property claimed ;

(b) allow any time for payment of any debt ;

(c) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the trust ; and,

(d) for any of those purposes, enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when by the instrument of trust (if any) a sole trustee is authorized to execute the trusts and powers thereof.

This section applies only if and as far as a contrary intention is not expressed in the instrument of trust (if any), and shall have effect subject to the terms of that instrument and to the provisions therein contained.

This section applies only to trusts created after this Act comes into force.

44. When an authority to deal with the trust-property is given to

Power to several trustees of whom one disclaims or dies.

several trustees, and one of them disclaims or dies, the authority may be exercised by the continuing trustees, unless from the terms of the instrument of trust it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees.

45. Where a decree has been made in a suit for the execution of a trust,

Suspension of trustee's powers by decree.

the trustee must not exercise any of his powers, except in conformity with such decree, or with the sanction of the Court by which the decree has been made, or, where an appeal against the decree is pending, of the Appellate Court.

CHAPTER V.

OF THE DISABILITIES OF TRUSTEES.

46. A trustee who has accepted the trust cannot afterwards renounce it,

Trustee cannot renounce after acceptance.

except (a) with the permission of a principal Civil Court of original jurisdiction, or (b), if the beneficiary is competent to contract, with his consent, or (c) by virtue of a special power in the instrument of trust.

47. A trustee cannot delegate his office or any of his duties either to a

Trustee cannot delegate.

co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation,

Explanation.—The appointment of an attorney or proxy to do an act merely ministerial, and involving no independent discretion, is not a delegation within the meaning of this section.

Illustrations.

(a.) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. B dies. C may bequeath the trust-property to D and E upon the trusts of A's will.

(b.) A is a trustee of certain property with power to sell the same. A may employ an auctioneer to effect the sale. 1882.

(c.) A bequeaths to B fifty houses let at monthly rents in trust to collect the rents and pay them to C. B may employ a proper person to collect these rents. Act 2,

48. When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.
Co-trustees cannot act singly.

49. Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith; such power may be controlled by a principal Civil Court of original jurisdiction.
Control of discretionary power.

50. In the absence of express direction to the contrary contained in the instrument of trust or of a contract to the contrary entered into with the beneficiary or the Court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill, and loss of time in executing the trust.
Trustee may not charge for services.

Nothing in this section applies to any Official Trustee, Administrator-General, Public Curator, or person holding a certificate of administration.

51. A trustee may not use or deal with the trust-property for his own profit or for any other purpose unconnected with the trust.
Trustee may not use trust-property for his own profit.

52. No trustee whose duty it is to sell trust-property, and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein, on his own account or as agent for a third person.
Trustee for sale or his agent may not buy.

53. No trustee, and no person who has recently ceased to be a trustee, may, without the permission of a principal Civil Court of original jurisdiction, buy or become mortgagee or lessee of the trust-property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage, or lease is manifestly for the advantage of the beneficiary.
Trustee may not buy beneficiary's interest without permission.

And no trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it, or any part thereof, or obtain a mortgage or lease of it, or any part thereof, for himself.
Trustee for purchase.

54. A trustee or co-trustee whose duty it is to invest trust-money on mortgage or personal security must not invest it to one of themselves. on a mortgage by, or on the personal security of, himself or one of his co-trustees.
Co-trustees may not lend to one of themselves.

CHAPTER VI.

OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY.

55. The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust-property.
Right to rents and profits.

56. The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest;
Right to specific execution.

and, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract and all of one mind, he or they may require the trustee to transfer the trust-property to him or them, or to such person as he or they may direct.
Right to transfer of possession.

1882.

Act 2.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the second clause of this section applies to such property during her marriage.

Illustrations.

(a.) Certain Government-securities are given to trustees upon trust to accumulate the interest until A attains the age of 24, and then to transfer the gross amount to him. A, on attaining majority, may, as the person exclusively interested in the trust-property, require the trustees to transfer it immediately to him.

(b.) A bequeaths Rs. 10,000 to trustees upon trust to purchase an annuity for B, who has attained his majority, and is otherwise competent to contract. B may claim the Rs. 10,000.

(c.) A transfers certain property to B, and directs him to sell or invest it for the benefit of C, who is competent to contract. C may elect to take the property in its original character.

57. The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust-property, the accounts of the trust-property, and the vouchers (if any) by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.

58. The beneficiary, if competent to contract, may transfer his interest, but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest :

Provided that when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section shall authorize her to transfer such interest during her marriage.

59. Where no trustees are appointed, or all the trustees die, disclaim, or are discharged, or where, for any other reason, the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee.

60. The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust-property shall be properly protected and held and administered by proper persons and by a proper number of such persons.

Explanation I.—The following are not proper persons within the meaning of this section :—

A person domiciled abroad ; an alien enemy ; a person having an interest inconsistent with that of the beneficiary ; a person in insolvent circumstances ; and, unless the personal law of the beneficiary allows otherwise, a married woman and a minor.

Explanation II.—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

Illustrations.

(a.) A, one of several beneficiaries, proves that B, the trustee, has improperly disposed of part of the trust-property, or that the property is in danger from B's being in insolvent circumstances, or that he is incapacitated from acting as trustee. A may obtain a receiver of the trust-property.

1882.
Act 2.

(b.) A bequeaths certain jewels to B in trust for C. B dies during A's lifetime; then A dies. C is entitled to have the property conveyed to a trustee for him.

(c.) A conveys certain property to four trustees in trust for B. Three of the trustees die. B may institute a suit to have three new trustees appointed in the place of the deceased trustees.

(d.) A conveys certain property to three trustees in trust for B. All the trustees disclaim. B may institute a suit to have three trustees appointed in place of the trustees so disclaiming.

(e.) A, a trustee for B, refuses to act, or goes to reside permanently out of British India, or is declared an insolvent, or compounds with his creditors, or suffers a co-trustee to commit a breach of trust. B may institute a suit to have A removed and a new trustee appointed in his room.

61. The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach of trust.

Illustrations.

(a.) A contracts with B to pay him monthly Rs. 100 for the benefit of C. B writes and signs a letter declaring that he will hold in trust for C the money so to be paid. A fails to pay the money in accordance with his contract. C may compel B on a proper indemnity to allow C to sue on the contract in B's name.

(b.) A is trustee of certain land, with a power to sell the same and pay the proceeds to B and C equally. A is about to make an improvident sale of the land. B may sue on behalf of himself and C for an injunction to restrain A from making the sale.

62. Where a trustee has wrongfully bought trust-property, the beneficiary has a right to have the property declared subject to the trust or re-transferred by the trustee, if it remains in his hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary must repay the purchase-money paid by the trustee, with interest, and such other expenses (if any) as he has properly incurred in the preservation of the property; and the trustee or purchaser must (a) account for the nett profits of the property, (b) be charged with an occupation-rent, if he has been in actual possession of the property, and (c) allow the beneficiary to deduct a proportionate part of the purchase-money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.

Nothing in this section—

(a) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or re-transferred, have contracted in good faith with the trustee or purchaser; or

(b) entitles the beneficiary to have the property declared subject to the trust or re-transferred where he, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, ratified the sale to the trustee with full knowledge of the facts of the case, and of his rights as against the trustee.

63. Where trust-property comes into the hands of a third person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit for a declaration, that the property is comprised in the trust.

Following trust property—
into the hands of third
persons;

Where the trustee has disposed of trust-property, and the money or other property which he has received therefor can be traced in his hands, or the hands of his legal

1882. representative or legatee, the beneficiary has, in respect thereof, rights as nearly as may be the same as his rights in respect of the original trust-property.
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Illustrations.

(a.) A, a trustee for B, of Rs. 10,000, wrongfully invests the Rs. 10,000 in the purchase of certain land. B is entitled to the land.

(b.) A, a trustee, wrongfully purchases land in his own name, partly with his own money, partly with money subject to a trust for B. B is entitled to a charge on the land for the amount of the trust-money so misemployed.

Saving of rights of certain transferees.

64. Nothing in section sixty-three entitles the beneficiary to any right in respect of property in the hands of—

(a) a transferee in good faith for consideration without having notice of the trust, either when the purchase-money was paid, or when the conveyance was executed, or—

(b) a transferee for consideration from such a transferee.

A judgment-creditor of the trustee attaching and purchasing trust-property is not a transferee for consideration within the meaning of this section.

Nothing in section sixty-three applies to money, currency notes, and negotiable instruments in the hands of a *bona fide* holder to whom they have passed in circulation, or shall be deemed to affect the Indian Contract Act, 1872, section 108, or the liability of a person to whom a debt or charge is transferred.

65. Where a trustee wrongfully sells or otherwise transfers trust-property, and afterwards himself becomes the owner of the property, the property again becomes subject to the trust notwithstanding any want of notice on the part of intervening transferees in good faith for consideration.

66. Where the trustee wrongfully mingles the trust-property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.

67. If a partner, being a trustee, wrongfully employs trust-property in the business or on the account of the partnership, no other partner is liable therefor in his personal capacity to the beneficiaries, unless he had notice of the breach of trust.

The partners having such notice are jointly and severally liable for the breach of trust.

Illustrations.

(a.) A and B are partners. A dies, having bequeathed all his property to B in trust for Z, and appointed B his sole executor. B, instead of winding-up the affairs of the partnership, retains all the assets in the business. Z may compel him, as partner, to account for so much of the profits as are derived from A's share of the capital. B is also answerable to Z for the improper employment of A's assets.

(b.) A, a trader, bequeaths his property to B in trust for C, appoints B his sole executor, and dies. B enters into partnership with X and Y in the same trade, and employs A's assets in the partnership-business. B gives an indemnity to X and Y against the claims of C. Here X and Y are jointly liable with B to C as having knowingly become parties to the breach of trust committed by B.

Liability of beneficiary joining in breach of trust.

68. Where one of several beneficiaries—

(a) joins in committing breach of trust, or

(b) knowingly obtains any advantage therefrom, without the consent of the other beneficiaries, or

(c) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not, within a reasonable time, take proper steps to protect the interests of the other beneficiaries, or

(d) has deceived the trustee, and thereby induced him to commit a breach of trust,

the other beneficiaries are entitled to have all his beneficial interest impounded as against him and all who claim under him (otherwise than as transferees for consideration without notice of the breach) until the loss caused by the breach has been compensated.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section applies to such property during her marriage.

69. Every person to whom a beneficiary transfers his interest has the rights, and is subject to the liabilities, of the beneficiary in respect of such interest at the date of the transfer.

CHAPTER VII.

OF VACATING THE OFFICE OF TRUSTEE.

Office how vacated.

70. The office of a trustee is vacated by his death or by his discharge from his office.

Discharge of trustee.

71. A trustee may be discharged from his office only as follows:—

- (a) by the extinction of the trust;
- (b) by the completion of his duties under the trust;
- (c) by such means as may be prescribed by the instrument of trust;
- (d) by appointment under this Act of a new trustee in his place;
- (e) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract, or
- (f) by the Court to which a petition for his discharge is presented under this Act.

72. Notwithstanding the provisions of section eleven, every trustee may

Petition to be discharged from trust. apply by petition to a principal Civil Court of original jurisdiction to be discharged from his office; and if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust-property. But where there is no such reason, the Court shall not discharge him, unless a proper person can be found to take his place.

73. Whenever any person appointed a trustee disclaims, or any trustee,

Appointment of new trustee on death, &c. either original or substituted, dies, or is, for a continuous period of six months, absent from British India, or leaves British India for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by—

(a) the person nominated for that purpose by the instrument of trust (if any), or

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(b) if there be no such person, or no such person able and willing to act, the author of the trust if he be alive and competent to contract, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

Every such appointment shall be by writing under the hand of the person making it.

On an appointment of a new trustee the number of trustees may be increased.

The Official Trustee may, with his consent, and by the order of the Court, be appointed under this section, in any case in which only one trustee is to be appointed, and such trustee is to be the sole trustee.

The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

74. Whenever any such vacancy or disqualification occurs, and it is found impracticable to appoint a new trustee under section seventy-three, the beneficiary may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly.

In appointing new trustees, the Court shall have regard (a) to the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust; (b) to the wishes of the person (if any) empowered to appoint new trustees; (c) to the question whether the appointment will promote or impede the execution of the trust; and (d) where there are more beneficiaries than one, to the interests of all such beneficiaries.

75. Whenever any new trustee is appointed under section seventy-three or section seventy-four, all the trust-property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee, either solely or jointly with the surviving or continuing trustees or trustee as the case may require.

Every new trustee so appointed, and every trustee appointed by a Court either before or after the passing of this Act, shall have the same powers, authorities, and discretions, and shall in all respects act, as if he had been originally nominated a trustee by the author of the trust.

76. On the death or discharge of one of several co-trustees, the trust survives, and the trust-property passes to the others, unless the instrument of trust expressly declares otherwise.

CHAPTER VIII.

OF THE EXTINCTION OF TRUSTS.

Trust how extinguished.

77. A trust is extinguished—

- (a) when its purpose is completely fulfilled; or
- (b) when its purpose becomes unlawful; or

(e) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise ; or

(d) when the trust, being revocable, is expressly revoked.

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Revocation of trust.

78. A trust created by will may be revoked at the pleasure of the testator.

A trust otherwise created can be revoked only—

(a) where all the beneficiaries are competent to contract—by their consent ;

(b) where the trust has been declared by a non-testamentary instrument or by word of mouth—in exercise of a power of revocation expressly reserved to the author of the trust ; or

(c) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors—at the pleasure of the author of the trust.

Illustration.

A conveys property to B in trust to sell the same, and pay, out of the proceeds, the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust ; but if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

Revocation not to defeat what trustees have duly done.

79. No trust can be revoked by the author of the trust so as to defeat or prejudice what the trustees may have duly done in execution of the trust.

CHAPTER IX.

OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS.

Where obligation in nature of trust is created.

80. An obligation in the nature of a trust is created in the following cases.

81. Where the owner of property transfers or bequeaths it, and it cannot be inferred, consistently with the attendant circumstances, that he intended to dispose of the

Where it does not appear that transferor intended to dispose of beneficial interest.

beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.

Illustrations.

(a.) A conveys land to B without consideration, and declares no trust of any part. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the land. B holds the land for the benefit of A.

(b.) A conveys to B two fields, Y and Z, and declares a trust of Y, but says nothing about Z. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in Z. B holds Z for the benefit of A.

(c.) A transfers certain stock belonging to him into the joint names of himself and B. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the stock during his life. A and B hold the stock for the benefit of A during his life.

(d.) A makes a gift of certain land to his wife B. She takes the beneficial interest in the land free from any trust in favour of A, for it may be inferred from the circumstances that the gift was for B's benefit.

82. Where property is transferred to one person for a consideration paid or provided by another person, and it appears

Transfer to one for consideration paid by another.

that such other person did not intend to pay or

1882. provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.
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Nothing in this section shall be deemed to affect the Code of Civil Procedure, section 317, or Act No. XI. of 1859 (*to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency*), section 36.

83. Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust-property, the trustee, in the absence of a direction to the contrary, must hold the trust-property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

Illustrations.

(a.) A conveys certain land to B—

“upon trust,” and no trust is declared; or

“upon trust to be thereafter declared,” and no such declaration is ever made; or

upon trusts that are too vague to be executed; or

upon trusts that become incapable of taking effect; or

“in trust for C,” and C renounces his interest under the trust.

In each of these cases B holds the land for the benefit of A.

(b.) A transfers Rs. 10,000 in the four per cents. to B in trust to pay the interest annually, accruing due to C for her life. A dies. Then C dies. B holds the fund for the benefit of A's legal representative.

(c.) A conveys land to B upon trust to sell it, and apply one moiety of the proceeds for certain charitable purposes, and the other for the maintenance of the worship of an idol. B sells the land, but the charitable purposes wholly fail, and the maintenance of the worship does not exhaust the second moiety of the proceeds. B holds the first moiety and the part unapplied of the second moiety for the benefit of A or his legal representative.

(d.) A bequeaths Rs. 10,000 to B, to be laid out in buying land to be conveyed for purposes which either wholly or partially fail to take effect. B holds for the benefit of A's legal representative the undisposed of interest in the money or land if purchased.

84. Where the owner of property transfers it to another for an illegal purpose, and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

85. Where a testator bequeaths certain property upon trust, and the purpose of the trust appears on the face of the will to be unlawful, or during the testator's lifetime the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative.

Where property is bequeathed, and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

86. Where property is transferred in pursuance of a contract which is liable to rescission or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor subject to repayment by the latter of the consideration actually paid.

87. Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein.
 Debtor becoming creditor's representative.

88. Where a trustee, executor, partner, agent, director of a company, legal adviser, or other person bound in a fiduciary character to protect the interests of another person by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person, and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.
 Advantage gained by fiduciary.

Illustrations.

(a.) A, an executor, buys at an undervalue from B, a legatee, his claim under the will. B is ignorant of the value of the bequest. A must hold for the benefit of B the difference between the price and value.

(b.) A, a trustee, uses the trust-property for the purpose of his own business. A holds for the benefit of his beneficiary the profits arising for such user.

(c.) A, a trustee, retires from his trust in consideration of his successor paying him a sum of money. A holds such money for the benefit of his beneficiary.

(d.) A, a partner, buys land in his own name with funds belonging to the partnership. A holds such land for the benefit of the partnership.

(e.) A, a partner, employed on behalf of himself and his co-partners in negotiating the terms of a lease, clandestinely stipulates with the lessor for payment to himself of a lakh of rupees. A holds the lakh for the benefit of the partnership.

(f.) A and B are partners. A dies. B, instead of winding up the affairs of the partnership, retains all the assets in the business. B must account to A's legal representative for the profits arising from A's share of the capital.

(g.) A, an agent employed to obtain a lease for B, obtains the lease for himself. A holds the lease for the benefit of B.

(h.) A, a guardian, buys up for himself incumbrances on his ward B's estate at an undervalue. A holds for the benefit of B the incumbrances so bought, and can only charge him with what he has actually paid.

89. Where, by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.
 Advantage gained by exercise of undue influence.

90. Where a tenant for life, co-owner, mortgagee, or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold, for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted, in gaining such advantage.
 Advantage gained by qualified owner.

Illustrations.

(a.) A, the tenant for life of leasehold property, renews the lease in his own name and for his own benefit. A holds the renewed lease for the benefit of all those interested in the old lease.

(b.) A village belongs to a Hindú family. A, one of its members, pays nazrāna to Government, and thereby procures his name to be entered as the infāmdār of the village. A holds the village for the benefit of himself and the other members.

(c.) A mortgages land to B, who enters into possession. B allows the Government revenue to fall into arrear with a view to the land being put up for sale and his becoming himself the purchaser of it. The land is accordingly sold to B. Subject to the repayment of the amount due on the mortgage and of his expenses properly incurred as mortgagee, B holds the land for the benefit of A.

91. Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

92. Where a person contracts to buy property to be held on trust for certain beneficiaries, and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

93. Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he must hold for the benefit of such creditors the advantage so gained.

94. In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.

Illustrations.

(a.) A, an executor, distributes the assets of his testator B to the legatees without having paid the whole of B's debts. The legatees hold for the benefit of B's creditors, to the extent necessary to satisfy their just demands, the assets so distributed.

(b.) A by mistake assumes the character of a trustee for B, and under colour of the trust receives certain moneys. B may compel him to account for such moneys.

(c.) A makes a gift of a lakh of rupees to B, reserving to himself, with B's assent, power to revoke at pleasure the gift as to Rs. 10,000. The gift is void as to Rs. 10,000, and B holds that sum for the benefit of A.

95. The person holding property in accordance with any of the preceding sections of this chapter must, so far as may be, perform the same duties, and is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it:

• • Provided that (a) where he rightfully cultivates the property, or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill, and loss of time in such cultivation or employment; and (b) where he holds the property by virtue of a contract with the person for whose benefit he holds it, or with any one through whom such person claims, he may, without the permission of the Court, buy or become lessee or mortgagee of the property or any part thereof.

96. Nothing contained in this chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force.

THE SCHEDULE.

1882.

STATUTE.

Act 2.

Year and chapter.	Short title.	Extent of repeal.
29 Car. II., c. 3 ...	The Statute of Frauds.	Sections 7, 8, 9, 10, and 11.

ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
XXVIII. of 1866 ...	The Trustees' and Mortgagees' Powers Act, 1866.	Sections 2, 3, 4, 5, 32, 33, 34, 35, 36, and 37. In sections 39 and 43 the word "trustee" wherever it occurs ; and in section 43 the words "management or" and "the trust-property or."
I. of 1877 ...	The Specific Relief Act, 1877.	In section 12 the first illustration.

THE ROYAL CHARTER ACT,

24 & 25 VIC., CAP. 104.

AN ACT FOR ESTABLISHING HIGH COURTS OF JUDICATURE IN INDIA.

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104.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. It shall be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at Fort William in Bengal for the Bengal Division of the Presidency of Fort William aforesaid, and by like Letters Patent to erect and establish like High Courts at Madras and Bombay for those Presidencies respectively, such High Courts to be established in the said several Presidencies at such time or respective times as to Her Majesty may seem fit, and the High Court to be established under any such Letters Patent in any of the said Presidencies shall be deemed to be established from and after the publication of such Letters Patent in the same Presidency, or such other time as in such Letters Patent may be appointed in this behalf.

2. The High Court of Judicature at Fort William in Bengal, and at the Presidencies of Madras and Bombay respectively, shall consist of a Chief Justice and as many Judges, not exceeding fifteen, as Her Majesty may, from time to time, think fit to appoint, who shall be selected from—

1st.—Barristers of not less than five years' standing ; or,

2nd.—Members of the Covenanted Civil Service of not less than ten years' standing, and who shall have served as Zila Judge, or shall have exercised the like powers as those of a Zila Judge for at least three years of that period ; or,

3rd.—Persons who have held Judicial Office not inferior to that of Principal Sadr Amin or Judge of a Small Cause Court for a period of not less than five years ; or,

4th.—Persons who have been Pleaders of a Sadr Court or High Court for a period of not less than ten years, if such Pleaders of a Sadr Court shall have been admitted as Pleaders of a High Court :

Provided that not less than one-third of the Judges of such High Courts respectively, including the Chief Justice, shall be Barristers, and not less than one-third shall be Members of the Covenanted Civil Service.

* * * * *

4. All the Judges of the High Courts established under this Act shall hold their offices during Her Majesty's pleasure :
Tennure of office of Judges, and resignation. Provided that it shall be lawful for any Judge of a High Court to resign such office of Judge to the Governor-General of India in Council or Governor in Council of the Presidency in which such High Court is established.

5. The Chief Justice of any such High Court shall have rank and precedence before the other Judges of the same High Court.
Precedence of Judges of High Court. Court, and such of the other Judges of such Court

24 & 25 as on its establishment shall have been transferred thereto from the Supreme Court shall have rank and precedence before the Judges of the High Court not transferred from the Supreme Court, and, except as aforesaid, all the Judges of each High Court shall have rank and precedence according to the seniority of their appointments, unless otherwise provided in their Patents.

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6. Any Chief Justice or Judge transferred to any High Court from the Salaries, &c., of Judges of Supreme Court shall receive the like salary and be High Courts. entitled to the like retiring pension and advantage as he would have been entitled to for, and in respect of, service in the Supreme Court, if such Court had been continued, his service in the High Court being reckoned as service in the Supreme Court; and, except as aforesaid, it shall be lawful for the Secretary of State in Council of India to fix the salaries, allowances, furloughs, retiring pensions, and (where necessary) expenses for equipment and voyage of the Chief Justices and Judges of the several High Courts under this Act, and from time to time to alter the same: Provided always that such alteration shall not affect the salary of any Judge appointed prior to the date thereof.

7. Upon the happening of a vacancy in the office of Chief Justice, and during any absence of a Chief Justice, the Governor-General in Council or Governor in Council, as the case may be, shall appoint one of the Judges of the same High Court to perform the duties of Chief Justice of the said Court until some person has been appointed by Her Majesty to the office of Chief Justice of the same Court, and has entered on the discharge of the duties of such office, or until the Chief Justice has returned from such absence; and upon the happening of a vacancy in the office of any other Judge of any such High Court, and during any absence of any such Judge, or on the appointment of any such Judge to act as Chief Justice, it shall be lawful for the Governor-General in Council, or Governor in Council, as the case may be, to appoint a person, with such qualifications as are required in persons to be appointed to the High Court to act as a Judge of the said High Court, and the person so appointed shall be authorised to sit and to perform the duties of a Judge of the said Court until some person has been appointed by Her Majesty to the office of Judge of the same Court, and has entered on the discharge of the duties of such office, or until the absent Judge has returned from such absence, or until the Governor-General in Council or Governor in Council, as aforesaid, shall see cause to cancel the appointment of such acting Judge.

8. Upon the establishment of such High Court as aforesaid in the Abolition of Supreme Courts Presidency of Fort William in Bengal, the Supreme and Sadr Courts, Court and the Court of Sadr Diwāni Adālat and Sadr Nizāmat Adālat at Calcutta in the same Presidency shall be abolished.

And upon the establishment of such High Court in the Presidency of Madras, the Supreme Court and the Court of Sadr Adālat and Faujdāri Adālat in the same Presidency shall be abolished.

And upon the establishment of such High Court in the Presidency of Bombay, the Supreme Court and the Court of Sadr Diwāni Adālat and Sadr Faujdāri Adālat in the same Presidency shall be abolished.

And the records and documents of the several Courts so abolished in each Presidency shall become and be records and documents of the High Court established in the same Presidency.

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9. Each of the High Courts to be established under this Act shall have Jurisdiction and powers of and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate, and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of justice in the Presidency for which it is established, as Her Majesty may, by such Letters Patent as aforesaid, grant and direct, subject, however, to such directions and limitations as to the exercise of Original Civil and Criminal Jurisdiction beyond the limits of the Presidency-town as may be prescribed thereby; and, save as by such Letters Patent as may be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court to be established in each Presidency shall have and exercise all jurisdiction and every power and authority whatsoever in any matter vested in any of the Courts in the same Presidency abolished under this Act at the time of the abolition of such last-mentioned Courts.

10. [*Repealed by 28 Vic., c. 15, s. 2.*]

11. Upon the establishment of the said High Courts in the said Presidencies respectively, all provisions then in force in India of Acts of Parliament, or of any Orders of Her Majesty in Council, or Charters, or of any Acts of the Legislature of India, which at the time or respective times of the establishment of such High Courts are respectively applicable to the Supreme Courts* at Fort William in Bengal, Madras, and Bombay respectively, or to the Judges of those Courts, shall be taken to be applicable to the said High Courts and to the Judges thereof respectively, so far as may be consistent with the provisions of this Act and the Letters Patent to be issued in pursuance thereof, and subject to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council.

12. From and after the abolition of the Courts abolished as aforesaid in any of the said Presidencies, the High Court of the same Presidency shall have jurisdiction over all proceedings pending in such abolished Courts at the time of the abolition thereof, and such proceedings and all previous proceedings in the said last-mentioned Courts shall be dealt with as if the same had been had in the said High Court, save that any such proceedings may be continued as nearly as circumstances permit, under and according to the practice of the abolished Courts respectively.

13. Subject to any laws or regulations which may be made by the Governor-General in Council, the High Court established in any Presidency under this Act may, by its own rules, provide for the exercise, by one or more Judges, or by Division Courts constituted by two or more Judges of the said High Court, of the original and appellate jurisdiction vested in such Court in such manner as may appear to such Court to be convenient for the due administration of justice.

14. The Chief Justice of each High Court shall, from time to time, determine what Judge in each case shall sit alone, and what Judges of the Court, whether with or without the Chief Justice, shall constitute the several Division Courts as aforesaid.

* See *Per Peacock, C.J.*, 2 B. L. R. Full Bench Rulings, 26, 27.

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104.

15. Each of the High Courts established under this Act shall have superintendence over all Courts which may be subject to its appellate jurisdiction, and shall have power to call for returns and to direct the transfer of any suit or appeal from any such Court to any other Court of equal or superior jurisdiction, and shall have power to make and issue general rules for regulating the practice and proceedings of such Courts, and also to prescribe forms for every proceeding in the said Courts for which it shall think necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the officers, and also to settle tables of fees to be allowed to the Sheriff, Attorneys, and all Clerks and Officers of Courts, and from time to time to alter any such rule or form or table; and the rules so made, and the forms so framed, and the tables so settled, shall be used and observed in the said Courts: Provided that such general rules and forms and tables be not inconsistent with the provisions of any law in force, and shall, before they are issued, have received the sanction, in the Presidency of Fort William, of the Governor-General in Council, and, in Madras or Bombay, of the Governor in Council of the respective Presidencies.

16. It shall be lawful for Her Majesty, if at any time hereafter Her Majesty see fit so to do, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature in and for any portion of the territories within Her Majesty's dominions in India, not included within the limits of the local jurisdiction of another High Court, to consist of a Chief Justice and of such number of other Judges with such qualifications as are required in persons to be appointed to the High Courts established at the Presidencies hereinbefore mentioned, as Her Majesty, from time to time, may think fit to appoint; and it shall be lawful for Her Majesty, by such Letters Patent, to confer on such Court any such jurisdiction, powers, and authority as under this Act is authorized to be conferred on, or will become vested in, the High Court to be established in any Presidency hereinbefore mentioned; and subject to the directions of such Letters Patent, all the provisions of this Act, having reference to the High Court established in any such Presidency, and to the Chief Justice and other Judges of such Court, and to the Governor-General or Governor of the Presidency in which such High Court is established, shall, as far as circumstances may permit, be applicable to the High Court established in the said territories, and to the Chief Justice and other Judges thereof, and to the person administering the government of the said territories.

• • 17. It shall be lawful for Her Majesty, if Her Majesty shall so think fit, at any time within three years after the establishment of any High Court under this Act, by Her Letters Patent, to revoke all or such parts or provisions as Her Majesty may think fit of the Letters Patent by which such Court was established, and to grant and make such other powers and provisions as Her Majesty may think fit, and as might have been granted or made by such first Letters Patent, or without any such revocation as aforesaid, by like Letters Patent, to grant and make any additional or supplementary powers and provisions which might have been granted or made in the first instance.

18. [Repealed by 28 Vic., c. 15, s. 2.]

19. The word "Barrister" in this Act shall be deemed to include **Letters**
 Interpretation of terms. Barristers of England or Ireland or Members of **Patent.**
 the Faculty of Advocates in Scotland; and the **Bengal.**
 words "Governor-General" and "Governor" shall comprehend the officer
 administering the government.

LETTERS PATENT FOR THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

Bearing date the 28th December 1865.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain

Recital of Acts.

and Ireland, Queen, Defender of the Faith, to all
 to whom these presents shall come, greeting:

Whereas, by an Act of Parliament, passed in the twenty-fourth and twenty-fifth years of Our reign, intituled "An Act for establishing High Courts of Judicature in India," it was, amongst other things, enacted that it should be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at Fort William in Bengal for the Bengal Division of the Presidency of Fort William aforesaid, and that such High Court consist of a Chief Justice and as many Judges, not exceeding fifteen, as Her Majesty might, from time to time, think fit to appoint, who should be selected from among persons qualified as in the said Act is declared: Provided always that the persons who, at the time of the establishment of such High Court, were Judges of the Supreme Court of Judicature and permanent Judges of the Court of Sadr Diwāni Adálat or Sadr Adálat of the same Presidency, should be and become Judges of such High Court without further appointment for that purpose, and the Chief Justice of such Supreme Court should become the Chief Justice of such High Court, and that, upon the establishment of such High Court as aforesaid, the Supreme Court and the Court of Sadr Diwāni Adálat and Sadr Nizámat Adálat at Calcutta, in the said Presidency, should be abolished:

And that the High Court of Judicature so to be established should have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate, and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of justice in the said Presidency as Her Majesty might, by such Letters Patent as aforesaid, grant and direct, subject, however, to such directions and limitations as to the exercise of original, civil, and criminal jurisdiction beyond the limits of the Presidency-town as might be prescribed thereby; and, save as by such Letters Patent might be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court so to be established should have and exercise all jurisdiction, and every power and authority whatsoever, in any manner vested in any of the Courts in the same Presidency abolished under the said Act at the time of the abolition of such last-mentioned Courts:

And whereas We did, upon full consideration of the premises, think fit to erect and establish, and by Our Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster, the fourteenth day of May, in the twenty-fifth year of Our reign, in the year of Our Lord one thousand eight hundred and sixty-two, did, accordingly, for Us, Our heirs and successors, erect and establish, at Fort

Letters Patent. William in Bengal, for the Bengal Division of the Presidency of Fort William aforesaid, a High Court of Judicature, which should be called the High Court of Judicature at Fort William in Bengal, and did thereby constitute the said Court to be a Court of Record; and whereas We did thereby appoint and ordain that the said High Court of Judicature at Fort William in Bengal should, until further or other provision should be made by Us or Our heirs and successors in that behalf, in accordance with the recited Act, consist of a Chief Justice and thirteen Judges, and did thereby, in addition to the persons who, at the time of the establishment of the said High Court, were Judges of the Supreme Court of Judicature and permanent Judges of the Court of Sadr Diwani Adalat in the said Presidency respectively, constitute and appoint certain other persons, being respectively qualified, as in the said Act is declared, to be Judges of the said High Court:

• And whereas, on the thirtieth day of January one thousand eight hundred and sixty-three, We did, in the manner in the said recited Act, provide, direct, and ordain that the said High Court should consist of a Chief Justice and fourteen Judges:

And whereas by the said recited Act it is declared lawful for Her Majesty, at any time within three years after the establishment of the said High Court, by Her Letters Patent, to revoke all or such parts or provisions as Her Majesty might think fit of the Letters Patent by which such Court was established, and to grant and make such other powers and provisions as Her Majesty might think fit, and as might have been granted or made by such first Letters Patent:

And whereas by the Act of the twenty-eighth of Our reign, chapter fifteen, entitled “An Act to extend the term for granting fresh Letters Patent for the High Courts in India, and to make further provision respecting the Territorial Jurisdiction of the said Courts,” the time for issuing fresh Letters Patent has been extended to the first of January one thousand eight hundred and sixty-six:

And whereas, in order to make further provision respecting the constitution of the said High Court, and the administration of justice thereby, it is expedient that the said Letters Patent, dated the fourteenth of May one thousand eight hundred and sixty-two, should be revoked, and that some of the powers and provisions thereby granted and made should be granted and made with amendments and additional powers and provisions by fresh Letters Patent:

1. Now know ye that We, upon full consideration of the premises, and Revocation of former Letters Patent. of Our special grace, certain knowledge, and mere motion, have thought fit to revoke, and do by these presents (from and after the date of the publication thereof, as hereinafter provided, and subject to the provisions thereof), revoke Our said Letters Patent of the fourteenth of May one thousand eight hundred and sixty-two, except so far as the Letters Patent of the fourteenth year of His Majesty King George the Third, dated the twenty-sixth of March one thousand seven hundred and seventy-four, establishing a Supreme Court of Judicature at Fort William in Bengal, were revoked or determined thereby.

2. And We do by these presents grant, direct, and ordain that, notwithstanding the revocation of the said Letters Patent of the fourteenth of May one thousand eight hundred and sixty-two, the High Court of Judicature, called the High Court of Judicature at Fort William in Bengal, shall be and continue, as from the time of the original erection and establishment thereof, the High

Court of Judicature at Fort William in Bengal for the Bengal Division of the Presidency of Fort William aforesaid, and that the said Court shall be and continue a Court of Record, and that all proceedings commenced in the said High Court prior to the date of the publication of these Letters Patent, shall be continued and depend in the said High Court as if they had commenced in the said High Court after the date of such publication, and that all rules and orders in force in the said High Court immediately before the date of the publication of these Letters Patent shall continue in force, except so far as the same are altered hereby, until the same are altered by competent authority.

3. And We do hereby appoint and ordain that the person and persons Judges of the said High Court who shall, immediately before the date of the Court to be continued. publication of these Letters Patent, be the Chief Justice and Judges, or acting Chief Justice or Judges, if any, of the said High Court of Judicature at Fort William in Bengal, shall continue to be the Chief Justice and Judges, or acting Chief Justice or Judges, of the said High Court, until further or other provisions shall be made by Us or Our heirs and successors in that behalf, in accordance with the said recited Act for establishing High Courts of Judicature in India.

4. And We do hereby appoint and ordain that every clerk and ministerial officer of the said High Court of Judicature Clerks, &c., of the said High Court to be continued. at Fort William in Bengal, appointed by virtue of the said Letters Patent of the fourteenth of May, one thousand eight hundred and sixty-two, shall continue to hold and enjoy his office and employment, with the salary thereunto annexed, until he be removed from such office and employment; and he shall be subject to the like power of removal, regulations, and provisions as if he were appointed by virtue of these Letters Patent.

5. And We do hereby ordain that the Chief Justice and every Judge who shall be, from time to time, appointed to the said High Court of Judicature at Fort William in Bengal, previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Governor-General in Council may commission to receive it:—

“I, A. B., appointed Chief Justice [or a Judge] of the High Court of Judicature at Fort William in Bengal, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge, and judgment.”

6. And We do hereby grant, ordain, and appoint that the said High Court of Judicature at Fort William in Bengal shall have and use, as occasion may require, a seal bearing a device and impression of Our Royal Arms, with an exergue or label surrounding the same, with this inscription, “The Seal of the High Court at Fort William in Bengal.” And We do further grant, ordain, and appoint that the said seal shall be delivered to and kept in the custody of the Chief Justice, and in case of vacancy of the office of Chief Justice, or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice, under the provisions of section 7 of the said recited Act; and We do further grant, ordain, and appoint that whensoever it shall happen that the office of Chief Justice or of the Judge to whom the custody of the said seal be committed shall be vacant, the said High Court shall be and is hereby authorized and empowered to demand, seize, and take the said seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her, or their possession.

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7. And We do hereby further grant, ordain, and appoint that all writs, summonses, precepts, rules, orders, and other mandatory process to be used, issued, or awarded by the said High Court of Judicature at Fort William in Bengal, shall run and be in the name and style of Us or Our heirs and successors, and shall be sealed with the seal of the said High Court.

8. And We do hereby authorize and empower the Chief Justice of the said High Court of Judicature at Fort William in Bengal from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed by the Governor-General in Council, to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of justice, and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent. And We do hereby ordain that every such appointment shall be forthwith submitted to the approval of the Governor-General in Council, and shall be either confirmed or disallowed by the Governor-General in Council; and it is Our further will and pleasure, and We do hereby, for Us, Our heirs and successors, give, grant, direct, and appoint that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice shall, from time to time, appoint for each office and place respectively, and as the Governor-General in Council shall approve of: Provided always, and it is Our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court so long as they shall hold their respective offices; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed by the Governor-General in Council, and to absent himself from the said limits during the term of such leave, in accordance with the said rules.

9. And We do hereby authorize and empower the said High Court of Judicature at Fort William in Bengal to approve, admit, and enrol such and so many Advocates, Vakils, and Attorneys as to the said High Court shall seem meet; and such Advocates, Vakils, and Attorneys, shall be and are hereby authorized to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may, by its rules and directions, determine, and subject to such rules and directions.

10. And We do hereby ordain that the said High Court of Judicature at Fort William in Bengal shall have power to make rules for the qualifications and admission of proper persons to be Advocates, Vakils, and Attorneys-at-law of the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause, the said Advocates, Vakils, or Attorneys-at-law; and no person whatsoever, but such Advocates, Vakils, or Attorneys, shall be allowed to act or to plead for, or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed to appear, plead, or act on his own behalf, or on behalf of a co-sutor.

As to Civil Jurisdiction.

11. And We do hereby ordain that the said High Court of Judicature at Fort William in Bengal shall have and exercise ordinary original civil jurisdiction within such local

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limits as may, from time to time, be declared and prescribed by any law made by competent legislative authority for India, and until some local limits shall be so declared and prescribed within the limits declared and prescribed by the proclamation fixing the limits of Calcutta, issued by the Governor-General in Council on the tenth day of September in the year of our Lord one thousand seven hundred and ninety-four, and the ordinary original civil jurisdiction of the said High Court shall not extend beyond the limits for the time being declared and prescribed as the local limits of such jurisdiction.

12. And We do further ordain that the said High Court of Judicature

Original jurisdiction as to suits. at Fort William in Bengal, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other immoveable property, such land or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court, or if the defendant, at the time of the commencement of the suit, shall dwell, or carry on business, or personally work for gain within such limits: except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Calcutta, in which the debt or damage, or value of the property sued for, does not exceed one hundred rupees.

13. And We do further ordain that the said High Court of Judicature

Extraordinary original jurisdiction. at Fort William in Bengal shall have power to remove, and to try and determine, as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court, whether within or without the Bengal Division of the Presidency of Fort William, subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court.

14. And We do further ordain that where plaintiff has several causes of

As to joinder of causes of action. action against defendant, such causes of action not being for land or other immoveable property, and the said High Court shall have original jurisdiction in respect of one of such causes of action, it shall be lawful for the said High Court to call on the defendant to show cause why the several causes of action should not be joined together in one suit, and to make such order for trial of the same as to the said High Court shall seem fit.

15. And We do further ordain that an appeal shall lie to the said High

Appeal from Courts of original jurisdiction to the High Court in its appellate jurisdiction. Court of Judicature at Fort William in Bengal from the judgment (not being a sentence or order passed or made in any criminal trial) of one Judge of the said High Court, or of one Judge of any

Division Court, pursuant to section 13 of the said recited Act, and that an appeal shall also lie to the said High Court from the judgment (not being a sentence or order as aforesaid) of two or more Judges of the said High Court, or of such Division Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the said High Court at the time being; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our heirs or successors, in Our or their Privy Council as hereinafter provided.

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16. And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall be a Court of Appeal from the Civil Courts of the Bengal Division of the Presidency of Fort William, and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any laws or regulations now in force.

17. And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall have the like power and authority with respect to the persons and estates of infants, idiots, and lunatics within the Bengal Division of the Presidency of Fort William, as that which was vested in the said High Court immediately before the publication of these presents.

18. And We do further ordain that the Court for relief of insolvent debtors at Calcutta shall be held before one of the Judges of the said High Court of Judicature at Fort William in Bengal, and the said High Court, and any such Judge thereof, shall have and exercise, within the Bengal Division of the Presidency of Fort William, such powers and authorities with respect to original and appellate jurisdiction, and otherwise, as are constituted by the laws relating to insolvent debtors in India.

19. And We do further ordain that, with respect to the law or equity to be applied to each case coming before the said High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original civil jurisdiction, such law or equity shall be the law or equity which would have been applied by the said High Court to such case if these Letters Patent had not issued.

20. And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied to each cause coming before the said High Court of Judicature at Fort William in Bengal, in the exercise of its extraordinary original civil jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which would have been applied to such case by any local Court having jurisdiction therein.

21. And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied by the said High Court of Judicature at Fort William in Bengal to each case coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

22. And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction; and also in respect of all such persons both within the limits of the Bengal Division at the Presidency of Fort William and beyond such limits, and not within the limits of the criminal jurisdiction of any other High Court or Courts established by competent legislative authority for India, as the said High Court of Judicature at Fort William in Bengal shall have criminal jurisdiction over at the date of the publication of these presents.

23. And We do further ordain that the said High Court of Judicature **Letters Patent.**
 at Fort William in Bengal, in the exercise of its **Patent.**
 ordinary original criminal jurisdiction, shall be **Bengal.**
 empowered to try all persons brought before it in due course of law.

24. And We do further ordain that the said High Court of Judicature
 Extraordinary original ju- at Fort William in Bengal shall have extraordi-
 risdiction. nary original criminal jurisdiction over all persons
 residing in places within the jurisdiction of any Court now subject to the
 superintendence of the said High Court, and shall have authority to try at
 its discretion any such person brought before it on charges preferred by the
 Advocate-General, or by any Magistrate or other Officer specially empowered
 by the Government in that behalf.

25. And We do further ordain that there shall be no appeal to the said
 High Court of Judicature at Fort William in
 Bengal from any sentence or order passed or made
 in any criminal trial before the Court of original jurisdiction which may be
 constituted by one or more Judges of the said High Court. But it shall be
 at the discretion of any such Court to reserve any point or points of law for
 the opinion of the said High Court.

26. And We do further ordain that on such point or points of law
 being so reserved as aforesaid, or on its being
 certified by the said Advocate-General that in his
 judgment there is an error in the decision of a point or points of law decided
 by the Court of original criminal jurisdiction, or that a point or points of
 law which has or have been decided by the said Court should be further
 considered, the said High Court shall have full power and authority to
 review the case, or such part of it as may be necessary, and finally deter-
 mine such point or points of law, and thereupon to alter the sentence passed
 by the Court of original jurisdiction, and to pass such judgment and sentence
 as to the said High Court shall seem right.

27. And We do further ordain that the said High Court of Judicature
 Appeals from Courts in at Fort William in Bengal shall be a Court of
 Provinces. appeal from the Criminal Courts of the Bengal
 Division of the Presidency of Fort William, and from all other Courts
 subject to its superintendence, and shall exercise appellate jurisdiction in
 such cases as are subject to appeal to the said High Court by virtue of any
 law now in force.

28. And We do further ordain that the said High Court of Judicature
 As to referred cases and at Fort William in Bengal shall be a Court of
 revision of trials. reference and revision from the Criminal Court
 subject to its appellate jurisdiction, and shall have power to hear and deter-
 mine all such cases referred to it by the Sessions Judges, or by any other
 Officers now authorized to refer cases to the said High Court, and to revise
 all such cases tried by any Officer or Court possessing criminal jurisdiction,
 as are now subject to reference to, or revision by, the said High Court.

29. And We do further ordain that the said High Court shall have
 As to transfer of a case power to direct the transfer of any criminal case
 from one Court to another. or appeal from any Court to any other Court of
 equal or superior jurisdiction, and also to direct the preliminary investigation
 or trial of any criminal case by any Officer or Court otherwise competent
 to investigate or try it, though such case belongs in ordinary course to the
 jurisdiction of some other Officer or Court.

Criminal Law under which Punishments to be inflicted.

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30. And We do further ordain that all persons brought for trial before the said High Court of Judicature at Fort William in Bengal, either in the exercise of its original jurisdiction, or in the exercise of jurisdiction as a Court of appeal, reference, or revision, charged with any offence for which provision is made by Act No XLV. of 1860, called the "Indian Penal Code," or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

Exercise of Jurisdiction on Circuit or Special Commission.

31. And We do further ordain that whenever it shall appear to the Governor-General in Council convenient that the jurisdiction and power by these Our Letters Patent, or by the recited Act, vested in the said High Court of Judicature at Fort William in Bengal, should be exercised in any place within the jurisdiction of any Court, now subject to the superintendence of the said High Court, other than the usual place of sitting of the said High Court, or at several such places by way of circuit, the proceeding in cases before the said High Court at such place or places shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.

Admiralty and Vice-Admiralty Jurisdiction.

32. And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall have and exercise all such civil and maritime jurisdiction as may now be exercised by the said High Court as a Court of admiralty or of vice-admiralty, and also such jurisdiction for the trial and adjudication of prize causes and other maritime questions arising in India as may now be exercised by the said High Court.

33. And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall have and exercise all such criminal jurisdiction as may now be exercised by the said High Court as a Court of admiralty or vice-admiralty, or otherwise in connection with maritime matters or matters of prize.

Testamentary and Intestate Jurisdiction.

34. And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall have the like power and authority as that which may now be lawfully exercised by the said High Court [except within the limits of the jurisdiction for that purpose of any other High Court established by Her Majesty's Letters Patent] in relation to the granting of probates of last wills and testaments, and letters of administration of the goods, chattels, credits, and all other effects whatsoever of persons dying intestate, whether within or without the said Bengal Division subject to the orders of the Governor-General in Council as to the period when the said High Court shall cease to exercise testamentary and intestate jurisdiction in any place or places beyond the limits of the provinces or places for which it was established]: Provided always that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India, by which power is given to any other Court to grant such probates and letters of administration.

Matrimonial Jurisdiction.

35. And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall have jurisdiction, within the Bengal Division of the Presidency of Fort William, in matters matrimonial between Our subjects professing the Christian religion: Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by Royal Charter within the said Presidency lawfully possessed thereof. Letters Patent, Bengal.

Powers of single Judges and Division Courts.

36. And We do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature at Fort William in Bengal in the exercise of its original or appellate jurisdiction may be performed by any Judge, or by any Division Court thereof appointed or constituted for such purpose, under the provisions of the thirteenth section of the aforesaid Act of the twenty-fourth and twenty-fifth years of Our reign; and if such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges should be equally divided, then the opinion of the senior Judge shall prevail.

Regulation of Civil Proceedings.

37. And We do further ordain that it shall be lawful for the said High Court of Judicature at Fort William in Bengal, from time to time, to make rules and orders for the purpose of regulating all proceedings in civil cases which may be brought before the said High Court, including proceedings in its admiralty, vice-admiralty, testamentary, intestate, and matrimonial jurisdictions respectively: Provided always that the said High Court shall be guided in making such rules and orders as far as possible by the provisions of the Code of Civil Procedure, being an Act passed by the Governor-General in Council, and being Act No. VIII. of 1859, and the provisions of any law which has been made, amending or altering the same, by competent legislative authority for India.

Regulation of Criminal Proceedings.

38. And We do further ordain that the proceedings in all criminal cases which shall be brought before the said High Court of Judicature at Fort William in Bengal in the exercise of its ordinary original criminal jurisdiction, and also in all other criminal cases over which the said High Court had jurisdiction immediately before the publication of these presents, shall be regulated by the procedure and practice which was in use in the said High Court immediately before such publication, subject to any law which has been or may be made in relation thereto by competent legislative authority for India; and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure prescribed by an Act passed by the Governor-General in Council, and being Act No. XXV. of 1861, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid.

As to Privy Council Appeals.

39. And we do further ordain that any person or persons may appeal to Us, Our heirs and successors, in Our or their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree, or order

Letters Patent. of the said High Court of Judicature at Fort William in Bengal made on appeal, and from any final judgment, decree, or order made in the exercise of original jurisdiction by a majority of the full number of Judges of the said High Court, or of any Division Court from which an appeal shall not lie to the said High Court under the provision contained in the 15th clause of these presents: Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees, or that such judgment, decree, or order, shall involve, directly or indirectly, some claim, demand, or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgment, decree, or order made either on appeal or otherwise as aforesaid, when the said High Court shall declare that the case is a fit one for appeal to Us, Our heirs or successors, in Our or their Privy Council: subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the said Presidency, except so far as the said existing rules and orders respectively are hereby varied; and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

40. And We do further ordain that it shall be lawful for the said High Court of Judicature at Fort William in Bengal, at its discretion, on the motion, or, if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order, or sentence of the said High Court in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs and successors, in Our or their Privy Council, subject to the same rules, regulations, and limitations as are herein expressed respecting appeals from final judgments, decrees, orders, and sentences.

41. And We do further ordain that from any judgment, order, or sentence of the High Court of Judicature at Fort William in Bengal, made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order, or sentence to appeal to Us, Our heirs or successors in Council, provided the said High Court shall declare that the case is a fit one for such appeal, and under such conditions the said High Court may establish or require, subject always to such rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

42. And We do further ordain that in all cases of appeal made from any judgment, order, sentence, or decree of the said High Court of Judicature at Fort William in Bengal to Us, Our heirs or successors, in Our or their Privy Council, such High Court shall certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees, and orders had or made in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court; and that the said High Court shall also certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a copy of the reasons given by the Judges of such Court, or by any of such Judges, for or against the judgment or determination appealed against. And We do further ordain that the said High Court shall, in

all cases of appeal to Us, Our heirs or successors, conform to and execute, or Letters cause to be executed, such judgments and orders as We, Our heirs or successors, in Our or their Privy Council, shall think fit to make in the premises, in such manner as any original judgment, decree, or decretal orders, or other order or rule of the said High Court, should or might have been executed. Pa'ent.
N.W.P.

*Powers of Government to call for Records, &c.**

43. And it is Our further will and pleasure that the said High Court of Judicature at Fort William in Bengal shall comply with such requisitions as may be made by the Government for records, returns, and statements, in such form and manner as such Government may deem proper.

Powers of Indian Legislature preserved.

44. And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor-General in Council, exercised at meetings for the purpose of making laws and regulations, and also of the Governor-General in cases of emergency under the provisions of an Act of the twenty-fourth and twenty-fifth years of Our reign, chapter sixty-seven, and may be in all respects amended and altered thereby.

*As to Provisions of former Letters Patent.**

45. And it is Our further will and pleasure that these Letters Patent shall be published by the Governor-General in Council, and shall come into operation from and after the date on which effect shall have been given to them; so much of the aforesaid Letters Patent granted by His Majesty King George the Third as was not revoked or determined by the said Letters Patent of the fourteenth of May one thousand eight hundred and sixty-two, and is inconsistent with these Letters Patent, shall cease, determine, and be utterly void, to all intents and purposes whatsoever.

In Witness whereof We have caused these Our Letters to be made Patent. Witness Ourselves at Westminster, the twenty-eighth day of December in the twenty-ninth year of Our reign.

(Signed) C. ROMILLY.

LETTERS PATENT FOR ESTABLISHING A HIGH COURT IN THE N. W. PROVINCES.

Dated March 17, 1866.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to all Recital of Acts. to whom these presents shall come, greeting: Where-

as, by an Act of Parliament passed in the twenty-fourth and twenty-fifth years of Our reign, intituled "An Act for establishing High Courts of Judicature in India," it was, amongst other things, enacted that it should be lawful for Her Majesty, by letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at Fort William in Bengal for the Bengal Division of the Presidency of Fort William aforesaid, and that such High Court should consist of a Chief Justice and as many Judges, not exceeding fifteen, as Her Majesty might, from time to time, think fit to appoint, who should be selected from among persons qualified as in the said Act is declared: Provided always that the persons who, at the time of the establishment of such High Court, were Judges of the Supreme Court of

Letters Judicature, and permanent Judges of the Court of Sadr Diwāni Adālat or **Patent.** Sadr Adālat of the same Presidency, should be and become Judges of such High Court without further appointment for that purpose, and the Chief N.W.P. Justice of such Supreme Court should become the Chief Justice of such High Court, and that, upon the establishment of such High Court as aforesaid, the Supreme Court and the Court of Sadr Diwāni Adālat and Sadr. Nizāmat Adālat at Calcutta, in the said Presidency, should be abolished :

And that the High Court of Judicature so to be established should have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate, and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of justice in the said Presidency as Her Majesty might, by such Letters Patent as aforesaid, grant and direct, subject, however, to such directions and limitations, as to the exercise of original, civil, and criminal jurisdiction beyond the limits of the Presidency-towns, as might be prescribed thereby ; and save as by such Letters Patent might be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court so to be established should have and exercise all jurisdiction, and every power and authority whatsoever, in any manner vested in any of the Courts in the same Presidency abolished under the said Act at the time of the abolition of such last-mentioned Court :

And whereas it is further declared by the said recited Act that it shall be lawful for Us by Letters Patent to erect and establish a High Court of Judicature in and for any portion of the territories within Her Majesty's Dominions in India, not included within the limits of the local jurisdiction of another High Court, to consist of a Chief Justice and such number of other Judges, with such qualifications as were by the same Act required in persons to be appointed to the High Courts established at the said Presidencies, as we from time to time might think fit to appoint ; and that, subject to the directions of the Letters Patent, all the provisions of the said recited Act relative to High Courts and to the Chief Justice and other Judges of such Courts, and to the Governor-General, or Governor of the Presidency in which such High Courts were established, shall, as far as circumstances may permit, be applicable to any new High Court which may be established in the said territories, and to the Chief Justice and other Judges thereof, and to the persons administering the government of the said territories :

And whereas We did, upon full consideration of the premises, think fit to erect and establish, and by Our Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster, the fourteenth day of May in the twenty-fifth year of Our reign, in the year of our Lord one thousand eight hundred and sixty-two, did accordingly, for Us, Our heirs and successors, erect and establish, at Fort William in Bengal, for the Bengal Division of the Presidency of Fort William aforesaid, a High Court of Judicature, which should be called the High Court of Judicature at Fort William in Bengal, and did thereby constitute the said Court to be a Court of Record :

1. Now know ye that We, upon full consideration of the premises, and Establishment of High Court. of Our special grace, certain knowledge, and mere motion, have thought fit to erect and establish, and by these presents We do accordingly, for Us, Our heirs and successors, erect and establish, for the North-Western Provinces of the Presidency of Fort William aforesaid, a High Court of Judicature, which shall be called the High Court of Judicature for the North-Western Provinces, and We do hereby constitute the said Court to be a Court of Record.

2. And We do hereby appoint and ordain that the said High Court of Letters
Judicature for the North-Western Provinces shall, Patent.
Constitution, &c. until further or other provision shall be made by N. W. P.

Us or Our heirs and successors in that behalf, in accordance with the said recited Act, consist of a Chief Justice and five Judges, the first Chief Justice being Walter Morgan, Esquire, and the five Judges being Alexander Ross, Esquire, William Edwards, Esquire, William Roberts, Esquire, Francis Boyle Pearson, Esquire, and Charles Arthur Turner, Esquire, being respectively qualified as in the said Act is declared.

3. And We do hereby ordain that the Chief Justice, and every Judge
of the said High Court of Judicature for the
Declaration of Judges. North-Western Provinces, previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Governor-General in Council may commission to receive it :—

“I, A. B., appointed Chief Justice [or a Judge] of the High Court of Judicature for the North-Western Provinces, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge, and judgment.”

4. And We do hereby grant, ordain, and appoint that the said High
Seal. Court shall have and use, as occasion may require, a seal bearing a device and impression of Our Royal Arms, within an exergue or label surrounding the same, with this inscription, “The Seal of the High Court for the North-Western Provinces.” And We do further grant, ordain, and appoint that the said seal shall be delivered to and kept in the custody of the Chief Justice, and in case of vacancy of the office of Chief Justice, or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice, under the provisions of section 7 of the said recited Act ; and We do further grant, ordain, and appoint that whensoever it shall happen that the office of Chief Justice or of the Judge to whom the custody of the said seal be committed shall be vacant, the said High Court shall be and is hereby authorized and empowered to demand, seize, and take the said seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her, or their possession.

5. And We do hereby further grant, ordain, and appoint that all writs,
Writs, &c., how to issue. summonses, precepts, rules, orders, and other mandatory process to be used, issued, or awarded by the said High Court of Judicature for the North-Western Provinces, shall run and be in the name and style of Us, or of Our heirs and successors, and shall be sealed with the seal of the said High Court.

6. And We do hereby authorize and empower the Chief Justice of the
said High Court of Judicature for the North-
Appointments. Western Provinces from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed by the Governor-General in Council, to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of justice and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent. And We do hereby ordain that every such appointment shall be forthwith submitted to the approval of the Lieutenant-Governor of the North-Western Provinces, and shall be either confirmed or disallowed by the said Lieutenant-

Letters Patent. **N.W.P.** Governqr. And it is Our further will and pleasure, and We do hereby, for Us, Our heirs and successors, give, grant, direct, and appoint that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice shall, from time to time, appoint for each office and place respectively, and as the Lieutenant-Governor of the North-Western Provinces, subject to the control of the Governor-General in Council, shall approve of: Provided always, and it is Our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court, so long as they shall hold their respective offices; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed by the Governor-General in Council, and to absent himself from the said limits during the term of such leave, in accordance with the said rules.

As to Admission of Advocates, Vakils, Attorneys.

7. And We do hereby authorize and empower the said High Court of Judicature for the North-Western Provinces to approve, admit, and enrol such and so many Advocates, Vakils, and Attorneys as to the said High Court shall seem meet; and such Advocates, Vakils, and Attorneys, shall be and are hereby authorized to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may, by its rules and directions, determine, and subject to such rules and directions.

8. And We do hereby ordain that the said High Court of Judicature for the North-Western Provinces shall have power to make rules for the qualification and admission of proper persons to be Advocates, Vakils, and Attorneys-at-law of the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause, the said Advocates, Vakils, or Attorneys-at-law; and no person whatever, but such Advocates, Vakils, or Attorneys, shall be allowed to act or to plead for, or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed to appear, plead, or act on his own behalf, or on behalf of a co-suitor.

Civil Jurisdiction.

9. And We do further ordain that the said High Court of Judicature for the North-Western Provinces shall have power to remove, and to try and determine, as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court, subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reason for so doing being recorded on the proceedings of the said High Court.

10. And We do further ordain that an appeal shall lie to the said High Court of Judicature for the North-Western Provinces from the judgment (not being a sentence or order passed or made in any criminal trial) of one Judge of the said High Court or of one Judge of any Division Court, pursuant to section 13 of the said recited Act, and that an appeal shall also lie to the said High Court from the judgment (not being a sentence or order as aforesaid) of two or more Judges of the said High Court, or of such Division Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the

Appeal may lie from the Courts of original jurisdiction to High Court in its appellate jurisdiction.

Judges of the said High Court at the time being; but that the right of Letters appeal from other judgments of Judges of the said High Court of such Patent. Division Court in such case shall be to Us, Our heirs or successors, in Our or their Privy Council, as hereinafter provided. **N. W. P.**

11. And We do further ordain that the said High Court of Judicature for the North-Western Provinces shall be a Court of appeal from the Civil Courts of the North-Western Provinces, and from all other Courts to which there is now an appeal to the Sadr Diwāni Adālat, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any laws or regulations now in force.

12. And We do further ordain that the said High Court of Judicature for the North-Western Provinces shall have the like power and authority with respect to the persons and estates of infants, idiots, and lunatics within the North-Western Provinces, as that which is exercised in the Bengal Division of the Presidency of Fort William by the High Court of Judicature at Fort William in Bengal, but subject to the provisions of any laws or regulations now in force.

Law to be administered.

13. And We do further ordain that, with respect to the law or equity to be applied to each case coming before the said High Court of Judicature for the North-Western Provinces, in the exercise of its extraordinary original civil jurisdiction, such law or equity shall, until otherwise provided, be the law or equity which would have been applied to such case by any local Court having jurisdiction therein.

14. And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied by the said High Court of Judicature for the North-Western Provinces, to each case coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

Criminal Jurisdiction.

15. And We do further ordain that the said High Court of Judicature for the North-Western Provinces shall have ordinary original criminal jurisdiction in respect of all such persons within the said Provinces as the High Court of Judicature at Fort William in Bengal shall have criminal jurisdiction over at the date of the publication of these presents; and the criminal jurisdiction of the said last-mentioned High Court over such persons shall cease at such date: Provided, nevertheless, that criminal proceedings which shall, at such date, have been commenced in the said last-mentioned High Court, shall continue as if these presents had not been issued.

16. And We do further ordain that the said High Court of Judicature for the North-Western Provinces, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law.

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17. And We do further ordain that the said High Court of Judicature for the North-Western Provinces shall have extraordinary original jurisdiction over all persons residing in places within the jurisdiction of any Court now subject to the superintendence of the Sadr Nizámat Adálat, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any Magistrate or other Officer specially empowered by the Government in that behalf.

18. And We do further ordain that there shall be no appeal to the said High Court from any sentence or order passed or made in any criminal trial before the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

19. And We do further ordain that, on such point or points of law as to review of cases on being so reserved as aforesaid, the said High Court shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court shall seem right.

20. And We do further ordain that the said High Court of judicature for the North-Western Provinces shall be a Court of appeal from the Criminal Courts of the said Provinces, and from all other Courts from which there is now an appeal to the Court of Sadr Nizámat Adálat for the said Provinces, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said Court of Sadr Adálat by virtue of any law now in force.

21. And We do further ordain that the said High Court shall be a Court of reference and revision from the Criminal cases, &c. Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges or by any other Officers now authorized to refer cases to the Court of Sadr Nizámat Adálat of the North-Western Provinces, and to revise all such cases tried by any Officer or Court possessing criminal jurisdiction as are now subject to reference to, or revision by, the said Court of Sadr Nizámat Adálat.

22. And We do further ordain that the said High Court shall have power to direct the transfer of any criminal case from one Court to another, or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any Officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of such other Officer or Court.

Act under which Punishments to be inflicted.

23. And We do further ordain that all persons brought for trial before the said High Court of Judicature for the North-Western Provinces, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of appeal, reference, or revision, charged with any offence for which provision is made

by Act No. XLV. of 1860, called the "Indian Penal Code," or by ~~any~~ ^{any} Act Letters amending or excluding the said Act may have been passed ~~prior~~ ^{prior} to the Patent. publication of these presents, shall be liable to punishment under the said ^{N. W. P.} Act or Acts, and not otherwise.

Exercise of Jurisdiction elsewhere in other places by way of Circuit or special Commission.

24. And We do further ordain that, whenever it shall appear to the Lieutenant-Governor of the North-Western Provinces, subject to the control of the Governor-General in Council, convenient that the jurisdiction and power, by these Our Letters Patent, or by the recited Act, vested in the said High Court, should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the Sadr Diwāni Adālat or the Sadr Nizāmat Adālat of the North-Western Provinces other than the usual place of sitting of the said High Court, or at several such places, by way of circuit, the proceedings in cases before the said High Court, at such place or places, shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.

Testamentary and Intestate Jurisdiction.

25. And We do further ordain that the said High Court of Judicature for the North-Western Provinces shall have the like power and authority as that which is now lawfully exercised within the said Provinces by the said High Court of Judicature at Fort William in Bengal, in relation to the granting of probates of last wills and testaments, and letters of administration of the goods, chattels, credits, and all other effects whatsoever of persons dying intestate; and that the jurisdiction of the said last-mentioned High Court in relation thereto shall cease from the date of the publication of these presents: Provided always that any proceedings already commenced in relation to any of the matters aforesaid in the said last-mentioned High Court shall continue as if these presents had not been issued: Provided also that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India, by which power is given to any other Court to grant such probates and letters of administration.

Matrimonial Jurisdiction.

26. And We do further ordain that the said High Court of Judicature for the North-Western Provinces shall have jurisdiction, within the said Provinces, in matters matrimonial between Our subject professing the Christian religion: Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by Royal Charter within the said Provinces lawfully possessed thereof.

As to Powers of single Judges and Division Courts.

27. And We do hereby declare that any function which is hereby directed to be performed by the said High Court of Jurisdiction for the North-Western Provinces, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court thereof appointed or constituted for such purpose, under the provisions of the thirteenth section of the aforesaid Act of the twenty-fourth and twenty-fifth years of Our reign; and if such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall

Letters Patent. N. W. P. he decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges should be equally divided, then the opinion of the senior Judges shall prevail.

Regulation of Civil Proceedings.

28. And We do further ordain that it shall be lawful for the said High Court of Judicature for the North-Western Provinces, from time to time, to make rules and orders for the purpose of adapting, as far as possible, the provisions of the Code of Civil Procedure, being an Act passed by the Governor-General in Council, and being Act No VIII. of 1859, and the provisions of any law which has been or may be made, amending or altering the same, by competent legislative authority for India, to all proceedings in its testamentary, intestate, and matrimonial jurisdictions respectively.

Regulations of Criminal Proceedings.

29. And We do further ordain that the proceedings in all criminal cases which shall be brought before the said High Court, in the exercise of its ordinary original criminal jurisdiction, shall be regulated by the procedure and practice which was in use in the High Court of Judicature for Fort William in Bengal immediately before the publication of these presents, subject to any law which has been or may be made in relation thereto by competent legislative authority for India ; and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure, prescribed by an Act passed by the Governor-General in Council, and being Act No. XXV. of 1861, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid.

As to Appeals to the Privy Council.

30. And We do further ordain that any person or persons may appeal to Us, Our heirs and successors, in Our or their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree, or order of the said High Court of Judicature for the North-Western Provinces, made on appeal, and from any final judgment, decree, or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court from which an appeal shall not lie to the said High Court under the provisions contained in the 10th clause of these presents : Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees, or that such judgment, decree, or other shall involve, directly or indirectly, some claim, demand, or question to or respecting property amounting to or of the value of not less than 10,000 rupees ; or from any other final judgment, decree, or order made either on appeal or otherwise as aforesaid, when the said High Court shall declare that the case is a fit one for appeal to Us, Our heirs or successors, in Our or their Privy Council : subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the said Provinces, except so far as the said existing rules and orders respectively are hereby varied ; and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

31. And We do further ordain that it shall be lawful for the said High Court of Judicature for the North-Western Provinces, at its discretion, on the motion, or if the said High Court be not sitting, then for any Judge of the said High Court, From interlocutory judgments.

upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order, or sentence of the said High Court, in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs and successors, in Our or their Privy Council, subject to the same rules, regulations, and limitations as are herein expressed respecting appeals from final judgments, decrees, orders, and sentences.

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32. And We do further ordain that from any judgment, order, or sentence of the said High Court of Judicature for the North-Western Provinces, made in the exercise of original criminal jurisdiction, or any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order, or sentence to appeal to Us, Our heirs and successors, in Council: Provided the said High Court shall declare that the case is a fit one for such appeal, and under such conditions as to the High Court may establish or require, subject always to such rules and orders as We may, with the advice of Our Privy Council, hereinafter make in that behalf.

33. And We do further ordain that, in all cases of appeal made from any judgment, order, sentence, or decree of the said High Court of Judicature for the North-Western Provinces, to Us, Our heirs or successors, in Our or their Privy Council, such High Court shall certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees, and orders had or made in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court; and that the said High Court shall also certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a copy of the reasons given by the Judges of such Court, or by any of such Judges, for or against the judgment or determination appealed against. And We do further ordain that the said High Court shall, in all cases of appeal to Us, Our heirs or successors, conform to and execute, or cause to be executed, such judgments and orders as We, Our heirs or successors, in Our or their Privy Council, shall think fit to make in the premises, in such manner as any original judgment, decree, or decretal orders, or other order or rule of the said High Court, should or might have been executed.

Power of Government to call for Records, &c.

34. And it is Our further will and pleasure that the said High Court of Judicature for the North-Western Provinces shall comply with such requisitions as may be made by the Government for records, returns, and statements, in such form and manner as such Government may deem proper.

Powers of Indian Legislature preserved.

35. And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor-General in Council, exercised at meetings for the purpose of making laws and regulations, and also of the Governor-General in cases of emergency under the provisions of an Act of the twenty-fourth and twenty-fifth years of Our reign, chapter sixty-seven, and may be in all respects amended and altered thereby. In witness whereof, We have caused these

1887.
Act 12. 4. The Local Government may, with the previous sanction of the Governor-General in Council, increase or reduce the number of District Judges and Subordinate Judges now fixed.

5. The Local Government may, subject to the control of the Governor-General in Council, alter the number of Munsifs now fixed :

Provided that, except in the case of Munsifs whose monthly salary does not exceed two hundred and fifty rupees, an increase of the number of Munsifs now fixed shall not be made by the Local Government without the previous sanction of the Governor-General in Council.

6. (1) Whenever the office of District Judge or Subordinate Judge is vacant by reason of the death, resignation, or removal of the Judge or other cause, or whenever the Governor-General in Council has sanctioned an increase of the number of District Judges or Subordinate Judges, the Local Government may fill up the vacancy or appoint the additional District Judges or Subordinate Judges, as the case may be.

(2) Nothing in this section shall be construed to prevent a Local Government from appointing a District Judge or Subordinate Judge to discharge for such period as it thinks fit, in addition to the functions devolving on him as such District Judge or Subordinate Judge, all or any of the functions of another District Judge or Subordinate Judge, as the case may be.

7. (1) Whenever the office of Munsif is vacant, or whenever the Local Government increases the number of Munsifs, the High Court shall nominate such person as it thinks fit to be a Munsif, and the Local Government shall appoint him accordingly.

(2) The Local Government may, after consultation with the High Court, and with the previous sanction of the Governor-General in Council, make rules as to the qualifications of persons to be appointed to the office of Munsif.

(3) When rules have been made under sub-section (2), a person shall not be nominated under sub-section (1) unless he possesses the qualifications required by the rules.

8. (1) When the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, the Local Government may, upon the recommendation of the High Court, and with the previous sanction of the Governor-General in Council, appoint such Additional Judges as may be requisite.

(2) Additional Judges so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them, and, in the discharge of those functions, they shall exercise the same powers as the District Judge.

9. Subject to the superintendence of the High Court, the District Judge shall have administrative control over all the Civil Courts under this Act within the local limits of his jurisdiction.

10. (1) In the event of the death, resignation, or removal of the District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the Additional

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Judge, or, if an Additional Judge is not present at that place, the senior Subordinate Judge present thereat, shall, without relinquishing his ordinary duties, assume charge of the office of the District Judge, and shall continue in charge thereof until the office is resumed by the District Judge, or assumed by an officer appointed thereto.

(2) While in charge of the office of the District Judge, the Additional Judge or Subordinate Judge, as the case may be, may, subject to any rules which the High Court may make in this behalf, exercise any of the powers of the District Judge.

11. (1) In the event of the death, resignation, or removal of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the District Judge may transfer all or any of the proceedings pending in the Court of the Subordinate Judge either to his own Court or to any Court under his administrative control competent to dispose of them.

(2) Proceedings transferred under sub-section (1) shall be disposed of as if they had been instituted in the Court to which they are so transferred:

(3) Provided that the District Judge may re-transfer to the Court of the Subordinate Judge or his successor any proceedings transferred under sub-section (1) to his own or any other Court.

(4) For the purposes of proceedings which are not pending in the Court of the Subordinate Judge on the occurrence of an event referred to in sub-section (1), and with respect to which that Court has exclusive jurisdiction, the District Judge may exercise all or any of the jurisdiction of that Court.

12. (1) A District Judge, on the occurrence within the local limits of his jurisdiction of any vacancy in the office of Munsif, may appoint such person as he thinks fit

to act in the office until that person is relieved by a Munsif appointed under section 7, or his appointment is cancelled by the District Judge.

(2) The District Judge shall forthwith report to the High Court the occurrence of every such vacancy and the making and cancelling of every such appointment.

13. (1) The Local Government may, by notification in the official Gazette, fix and alter the local limits of the jurisdiction of any Civil Court under this Act.

(2) If the same local jurisdiction is assigned to two or more Subordinate Judges or to two or more Munsifs, the District Judge may assign to each of them such civil business cognizable by the Subordinate Judge or Munsif, as the case may be, as, subject to any general or special orders of the High Court, he thinks fit.

(3) When civil business arising in any local area is assigned by the District Judge under sub-section (2) to one of two or more Subordinate Judges or to one of two or more Munsifs, a decree or order passed by the Subordinate Judge or Munsif shall not be invalid by reason only of the case in which it was made having arisen wholly or in part in a place beyond the local area if that place is within the local limits fixed by the Local Government under sub-section (1).

(4) A Judge of a Court of Small Causes appointed to be also a Subordinate Judge or Munsif is a Subordinate Judge or Munsif, as the case may be, within the meaning of this section.

(5) The present local limits of the jurisdiction of every Civil Court under this Act shall be deemed to have been fixed under this section.

14. (1) The Local Government may, by notification in the official Gazette, fix and alter the place or places at which any Civil Court under this Act is to be held.

Place of sitting of Courts.

(2) All places at which any such Courts are now held shall be deemed to have been fixed under this section.

15. (1) Subject to such orders as may be made by the Governor-General in Council, the High Court shall prepare a list of days to be observed in each year as close holidays in the Civil Courts.

Vacations of Courts.

(2) The list shall be published in the local official Gazette.

(3) A judicial act done by a Civil Court on a day specified in the list shall not be invalid by reason only of its having been done on that day.

16. Every Civil Court under this Act shall use a seal of such form and dimensions as are prescribed by the Local Government.

Seals of Courts.

17. (1) Where any Civil Court under this Act has, from any cause, ceased to have jurisdiction with respect to any case, any proceeding in relation to that case which, if that Court had not ceased to have jurisdiction, might have been had therein, may be had in the Court to which the business of the former Court has been transferred.

Continuance of proceedings of Courts ceasing to have jurisdiction.

(2) Nothing in this section applies to cases for which provision is made in section 623 or section 619 of the Code of Civil Procedure or in any other enactment for the time being in force.

CHAPTER III.

ORDINARY JURISDICTION.

18. Save as otherwise provided by any enactment for the time being in force, the jurisdiction of a District Judge or Subordinate Judge extends, subject to the provisions of section 15 of the Code of Civil Procedure, to all original suits for the time being cognizable by Civil Courts.

Extent of original jurisdiction of District or Subordinate Judge.

19. (1) Save as aforesaid, and subject to the provisions of sub-section (2), the jurisdiction of a Munsif extends to all like suits of which the value does not exceed one thousand rupees.

Extent of jurisdiction of Munsif.

(2) The Local Government may, on the recommendation of the High Court, direct by notification in the official Gazette, with respect to any Munsif named therein, that his jurisdiction shall extend to all like suits of such value not exceeding two thousand rupees as may be specified in the notification.

20. (1) Save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of a District Judge or Additional Judge shall lie to the High Court.

Appeals from District and Additional Judges.

(2) An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which, if the decree or order had been made by the District Judge, an appeal would not lie to that Court.

Appeals from Subordinate Judges and Munsifs.

21. (1) Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall lie— 1887. Act 12.

(a) to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made did not exceed five thousand rupees, and

(b) to the High Court in any other case.

(2) Save as aforesaid, an appeal from a decree or order of a Munsif shall lie to the District Judge.

(3) Where the function of receiving any appeals which lie to the District Judge under sub-section (1) or sub-section (2) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge.

(4) The High Court may, with the previous sanction of the Local Government, direct, by notification in the official Gazette, that appeals lying to the District Judge under sub-section (2) from all or any of the decrees or orders of any Munsif shall be preferred to the Court of such Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly.

CHAPTER IV.

SPECIAL JURISDICTION.

Power to transfer to Subordinate Judges appeals from Munsifs.

22. (1) A District Judge may transfer to any Subordinate Judge under his administrative control any appeals pending before him from the decrees or orders of Munsifs.

(2) The District Judge may withdraw any appeal so transferred, and either hear and dispose of it himself or transfer it to a Court under his administrative control competent to dispose of it.

(3) Appeals transferred under this section shall be disposed of subject to the rules applicable to like appeals when disposed of by the District Judge.

23. (1) The High Court may, by general or special order, authorize any Subordinate Judge or Munsif to take cognizance of, or any District Judge to transfer to a Subordinate Judge or Munsif under his administrative control, any of the proceedings next hereinafter mentioned or any class of those proceedings specified in the order.

(2) The proceedings referred to in sub-section (1) are the following, namely:—

(a) proceedings under Bengal Regulation V., 1799 (*to limit the Interference of the Zillah and City Courts of Dewanny Adarhut in the Execution of Wills and Administration to the Estates of persons dying intestate*);

(b) proceedings under Act XL. of 1858 (*for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal*), or Act IX. of 1861 (*to amend the law relating to Minors*);

(c) applications for certificates under Act No. XXVII. of 1860 (*for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*);

(d) proceedings under the Indian Succession Act, 1865, and the Probate and Administration Act, 1881, which cannot be disposed of by District Delegates; and

(e) references by Collectors under section 322C of the Code of Civil Procedure.

1887. (3) The District Judge may withdraw any such proceedings taken cognizance of by, or transferred to, a Subordinate Judge or Munsif, and may either himself dispose of them or transfer them to a Court under his administrative control competent to dispose of them.

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24. (1) Proceedings taken cognizance of by, or transferred to, a Subordinate Judge or Munsif, as the case may be, under the last foregoing section, shall be disposed of by him subject to the rules applicable to like proceedings when disposed of by the District Judge :

Disposal of proceedings referred to in last foregoing section.

Provided that an appeal from an order of a Munsif in any such proceeding shall lie to the District Judge.

(2) An appeal from the order of the District Judge on the appeal from the order of the Munsif under this section shall lie to the High Court if a further appeal from the order of the District Judge is allowed by the law for the time being in force.

25. The Local Government may, by notification in the official Gazette, confer, within such local limits as it thinks fit, upon any Subordinate Judge or Munsif, the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, for the trial of suits cognizable by such Courts, up to such value not exceeding five hundred rupees in the case of a Subordinate Judge or one hundred rupees in the case of a Munsif as it thinks fit, and may withdraw any jurisdiction so conferred.

Power to invest Subordinate Judges and Munsifs with Small Cause Court jurisdiction.

CHAPTER V.

MISFEASANCE.

26. Any District Judge, Additional Judge, Subordinate Judge, or Munsif, may, for any misconduct, be suspended or removed by the Local Government.

Suspension or removal of Judges by Local Government.

27. (1) The High Court may, whenever it sees urgent necessity for so doing, suspend a Subordinate Judge.

Suspension of Subordinate Judge by High Court.

(2) Whenever the High Court suspends a Subordinate Judge under subsection (1), it shall forthwith report to the Local Government the circumstances of the suspension, and the Local Government shall make such order with respect thereto as it thinks fit.

28. (1) The High Court may appoint a commission for enquiring into alleged misconduct of a Munsif.

Suspension or removal of Munsif by High Court.

(2) On receiving the report of the result of the inquiry, the High Court may, if it thinks fit, remove or suspend the Munsif.

(3) The provisions of Act No. XXXVII. of 1850 (*for regulating Inquiries into the behaviour of Public Servants*) shall apply to inquiries under this section, the powers conferred by that Act on the Government being exercised by the High Court.

(4) The High Court may, before appointing the commission, suspend the Munsif pending the result of the inquiry.

(5) The High Court may, without appointing a commission, remove or suspend a Munsif.

29. (1) A District Judge may, whenever he sees urgent necessity for 1887.
Suspension of Munsif by District Judge. so doing, suspend a Munsif under his administrative control. Act 12.

(2) Whenever a District Judge suspends a Munsif under sub-section (1), he shall forthwith report to the High Court the circumstances of the suspension, and the High Court shall make such order with respect thereto as it thinks fit.

CHAPTER VI.

MINISTERIAL OFFICERS.

30. District Judges shall appoint the ministerial officers of their Courts, and, subject only to the control of the Local Government, may remove or suspend those officers, or fine them in an amount not exceeding one month's salary.

Appointment and removal of ministerial officers of District Courts.
Appointment and removal of ministerial officers of other Courts.
31. (1) The ministerial officers of the Civil Courts subject to the administrative control of the District Judge shall be appointed—

(a) in the case of an appointment not likely to last, and not lasting, longer than two months, by those Courts, and

(b) in any other case, by the District Judge.

(2) An Additional Judge, Subordinate Judge, or Munsif, may, by order, remove or suspend, or fine in an amount not exceeding one month's salary, any ministerial officer of his Court who is guilty of misconduct or neglect in the performance of the duties of his office.

32. The provisions of the two last foregoing sections shall be subject to the following modifications in their application to ministerial officers employed by more Civil Courts than one, namely :—

Appointment and removal of ministerial officers on joint establishments.
 (a) appointments not likely to last, and not lasting, longer than two months, shall be made by the Court of highest class among those Courts, or, where there is no difference in class among those Courts, by the senior among the presiding Judges thereof; and
 (b) such ministerial officers may not be removed or suspended by any Court except the Court which under clause (a) of this section is for the time being charged with the duty of making appointments to fill temporary vacancies.

33. The District Judge, subject only to the control of the Local Government, may, by order, suspend or remove any ministerial officer to whom section 31 or section 32 applies, and may, on appeal or otherwise, reverse or modify any order made under either of those sections by any Court under his administrative control.

General powers of District Judge.
34. (1) The Local Government may, at the instance of the High Court or of a District Judge, transfer a ministerial officer from any Civil Court under this Act to any other such Court.

Transfer of ministerial officers.
 (2) The District Judge may transfer a ministerial officer from any such Court within the local limits of his jurisdiction to any other such Court within those limits.

Recovery of fines.

35. Any fine imposed under this chapter may be recovered by deduction from the salary of the person fined.

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CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

Power to confer powers of Civil Courts on officers.

36. (1) The Local Government may invest with the powers of any Civil Court under this Act by name or in virtue of office,—

- (a) any officer in the Chutia Nágpur, Jalpaigori, or Darjiling district, or in any part of the territories administered by the Chief Commissioner of Assam, except the district of Silhat, or,
- (b) after consultation with the High Court, any officer serving in any other part of the territories to which this Act extends and belonging to a class defined in this behalf by the Local Government with the previous sanction of the Governor-General in Council.

(2) Nothing in sections 4 to 8 (both inclusive), or sections 10 to 12 (both inclusive), or sections 27 to 35 (both inclusive), applies to any officer so invested, but all the other provisions of this Act shall, so far as those provisions can be made applicable, apply to him as if he were a Judge of the Court with the powers of which he is invested.

(3) Where, in the territories mentioned in clause (a) of sub-section (1), the same local jurisdiction is assigned to two or more officers invested with the powers of a Munsif, the officer invested with the powers of a District Judge may, with the previous sanction of the Local Government, delegate his functions under sub-section (2) of section 13 to an officer invested with the powers of a Subordinate Judge or to one of the officers invested with the powers of a Munsif.

(4) Where the place at which the Court of an officer invested with powers under sub-section (1) is to be held has not been fixed under section 14, the Court may be held at any place within the local limits of its jurisdiction.

37. (1) Where in any suit or other proceeding it is necessary for a Civil Court to decide any question regarding succession, inheritance, marriage, or caste, or any religious usage or institution, the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus, shall form the rule of decision, except in so far as such law has, by legislative enactment, been altered or abolished.

(2) In cases not provided for by sub-section (1) or by any other law for the time being in force, the Court shall act according to justice, equity, and good conscience.

Judges not to try suits in which they are interested.

38. (1) The presiding officer of a Civil Court shall not try any suit or other proceeding to which he is a party, or in which he is personally interested.

(2) The presiding officer of an appellate Civil Court under this Act shall not try an appeal against a decree or order passed by himself in another capacity.

(3) When any such suit, proceeding, or appeal as is referred to in sub-section (1) or sub-section (2) comes before any such officer, the officer shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

(4) The superior Court shall thereupon dispose of the case under section 25 of the Code of Civil Procedure.

(5) Nothing in this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

39. For the purposes of the last foregoing section, the presiding officer of a Court subject to the administrative control of the District Judge shall be deemed to be immediately subordinate to the Court of the District Judge, and for the purposes of the Code of Civil Procedure, the Court of such an officer shall be deemed to be of a grade inferior to that of the Court of the District Judge. 1887.
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40. (1) This section and sections 15, 32, 37, 38, and 39, apply to Courts of Small Causes constituted under the Provincial Small Cause Courts Act, 1887.

(2) Save as provided by that Act, the other sections of this Act do not apply to those Courts.

THE NEW CODE OF CIVIL PROCEDURE.

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CODE OF CIVIL PROCEDURE.

ACT NO. XIV. OF 1882.*

RECEIVED THE G.-G.'s ASSENT ON THE 17TH MARCH 1882.

An Act to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

Preamble. WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; It is hereby enacted as follows:—

PRELIMINARY.

Short title.
Commencement.

1. This Act may be cited as "The Code of Civil Procedure:" and it shall come into force on the first day of June 1882. Extending to Provincial S. Courts.

Local extent.

This section and section 3 extend to the whole of British India. The other sections extend to the whole of British India except the Scheduled Districts as defined in Act No. XIV. of 1874.

On 28th September 1877 (i. e., three days before Act X. of 1877 came into operation), an application was made for the enforcement of a money-decree by attachment (*inter alia*) of a political pension enjoyed by the defendants. Under Act VIII. of 1859, s. 216, a notice was issued on the same day to the defendants, calling upon them to show cause why the decree should not be executed. The defendants accordingly appeared on the day fixed (at which date Act X. of 1877 had come into force), and contended that, under s. 266, cl. g, of that Act, the pension was no longer attachable. *Held* that all proceedings, commenced and pending when Act X. of 1877 became law, were, under Act I. of 1868, s. 6, to be governed by the law theretofore in force, the general rule of construction contained in that section not being affected or varied by Act X. of 1877, ss. 1 and 3; and that a *bond fide* application for enforcement of a decree in a particular way, coupled with an order of the Court in furtherance of that object, as much constitutes a proceeding in execution commenced and pending as the actual issue of a warrant of attachment.—*Vidyaram v. Chandra Shekharrám*, I. L. R., 4 Bom. 163. [Nov. 19, 1879.]

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context—

Ditto.

"chapter:"

"chapter" means a chapter of this Code:

"district" means the local limits of the jurisdiction of a ~~principal~~ Civil

"District:"

Court of original jurisdiction (hereinafter called a 'District Court'), and includes the local

"District Court:"

limits of the ordinary original civil jurisdiction of a High Court: every Court of a grade inferior to that of a District Court, and every Court of Small Causes, shall, for the purposes of this Code, be deemed to be subordinate to the High Court and the District Court:

"pleader" means every person entitled to appear and plead for another in Court, and includes an advocate, a vakil, and an attorney of a High Court:

* As amended by Acts XV. of 1882, XVIII. of 1884, XIV. of 1885, and IV of 1886.

- "Government Pleader" includes also any officer appointed by the Local Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader :
- "Collector : " " "Collector" means every officer performing the duties of a Collector of land-revenue :
- "decree" means the formal expression of an adjudication upon any right claimed, or defence set up, in a Civil Court, when such adjudication, so far as regards the Court expressing it, decides the suit or appeal. An order rejecting a plaint, or directing accounts to be taken, or determining any question mentioned or referred to in section 244, but not specified in section 588, is not within this definition : an order* specified in section 588 is not within this definition :
- "order : " "order" means the formal expression of any decision of a Civil Court which is not a decree as above defined :
- "judgment : " "judgment" means the statement given by the Judge of the grounds of a decree or order :
- "Judge : " "Judge" means the presiding officer of a Court :
- "judgment-debtor : " "judgment-debtor" means any person against whom a decree or order has been made :
- "decree-holder" means any person in whose favour a decree or any order capable of execution has been made, and includes any person to whom such decree or order is transferred :
- "decree-holder : " "written" includes printed and lithographed, and "writing" includes print and lithography :
- "written : " "signed" includes marked, when the person making the mark is unable to write his name ; it also includes stamped with the name of the person referred to :
- "signed : " "foreign Court" means a Court situate beyond the limits of British India, and not having authority in British India, nor established by the Governor-General in Council :
- "foreign Court : " "foreign judgment" means the judgment of a foreign Court :
- "foreign judgment : " "public officer" means a person falling under any of the following descriptions (namely) :—
- "public officer : " every Judge ;
 every covenanted servant of Her Majesty ;
 every commissioned officer in the military or naval forces of Her Majesty while serving under Government ;
 every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties ;
 every person who holds any office by virtue of which he is empowered to place or keep any person in confinement ;
 every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience ;

every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty.

And in any part of British India in which this Code operates, "Government" includes the Government of India as well as the Local Government.

THE term "judicial proceeding," as used in Act X. of 1877, s. 2, must be understood to mean a judicial proceeding of the same nature as a suit, or such proceedings as are referred to in ss. 333, 522, 526, and 531. The definition given in Act X. of 1872 is not applicable.—*Dalpatbhai Bhāgubhai v. Amarsang Khemā Bhāi*, I. L. R., 2 Bom. 553. [Mar. 20, 1878.]

THE effect of the proviso to s. 3 of Act X. of 1877 (taken in connection with the definition of the word "decree" in s. 2) is that, in all suits pending when that Act came into force, the practice and procedure to be followed down to the final result of such suits (i.e., when nothing remains to be done but to execute the decree or to appeal from it) are the same as previously existed, but that, in all subsequent proceedings in execution of the decree or in appeal from it, the practice and procedure provided by Act X. of 1877 are to be observed.—*Rustomji Burjorji v. Kessowji Naik*, I. L. R., 3 Bom. 161. [Aug. 13, 1878.]

A DECREE of a Small Cause Court can be executed by it at any place within the local limits of the District Court to which it is subordinate, as defined by Act X. of 1877, s. 2, without having recourse to the procedure under s. 648, which applies only to cases in which a decree passed in one district has to be executed in another district.—*Badan Bebajee v. Kala Chand Bebajee*, I. L. R., 4 Cal. 823. [Mar. 24, 1879.]

NOTWITHSTANDING the provisions of s. 12 of the Court Fees Act (VII. of 1870), an order rejecting a plaint on the ground of its being insufficiently stamped is appealable as a "decree" within the definition of "decree" in the Civil Procedure Code as amended by Act XII. of 1879.—*Ajoodhya Pershad v. Gunga Pershad*, 6 C. L. R. 567. [June 10, 1880.]

A COLLECTOR, when acting under s. 201 of Act XIX. of 1873 as the agent of the Court of Wards in respect of the estate of a disqualified person, is a public officer within the meaning of ss. 2 and 424 of Act X. of 1877, and consequently, when sued for acts done in that capacity, is entitled to the notice of suit required by the latter section.—*Collector of Bijoor v. Munavar*, I. L. R., 3 All. 20. [June 11, 1880.]

A DECREE-HOLDER, within the meaning of the Civil Procedure Code, is the person whose name appears on the record as the person in whose favour the decree was made, or some person whom the Court has, by order, recognized as the decree-holder from the original plaintiff or his representatives. S. 235 of the Civil Procedure Code puts on the party applying for execution the obligation of stating any adjustment between the parties after decree; that is, any matter not done through the Court, as well as any agreement through the Court.—*Paupayya v. Narasannah*, I. L. R., 2 Mad. 216. [Oct. 20, 1880.]

THE sharers of a joint undivided estate agreed in writing that such estate should be partitioned and the accounts thereof settled by arbitration, and named one of such sharers as arbitrator, and agreed that he should settle all the accounts, show the surplus at each sharer's credit, and prepare lots, after partition of the lands and houses comprehended in such estate, and have them drawn within one year from the completion of the partition. Subsequently, one of such sharers applied, under s. 523 of Act X. of 1877, to have such agreement filed in Court. The other sharers not objecting to this course, such agreement was filed accordingly, and the case was referred to such arbitrator. The arbitrator made an award, whereby he partitioned such estate into lots, assigning some only of such lots by name, and wherein he stated that he had not been able to settle the accounts owing to the default of the parties, and that, considering that the partition should take effect

without any delay, he did not ask for further time. He further stated that "all the parties state that they will adjust the accounts after renewing the agreement," and that he requested that the unassigned lots might be drawn in Court. The Court made an order confirming the award, and, it being objected that the settlement of the accounts should not be postponed, but that they should be settled as agreed, directed that the arbitrator should settle the accounts, and gave him a year's time for that purpose, and some of the parties, not being willing to draw the unassigned lots, directed the distribution of such lots "in reference to the age and number" of the sharers. *Held* that such order was a "decree" within the meaning of ss. 2 and 522 of Act X. of 1877: that the arbitrator should himself have drawn such lots, or he should have made the parties draw them; but, inasmuch as it would not have strained the agreement to have had such lots drawn in Court, and no objection had been taken to the arbitrator not having himself drawn them, it was not incumbent on the Court to have remitted the award in order that the arbitrator might have drawn them: that the Court, however, should not have distributed such lots in the manner it had done, but should have drawn a lot for each person, and in acting as it had done, it had acted contrary to the award, and for that reason its decree could not be maintained: and that, in confirming the award before the accounts had been settled, and an award made in respect thereof, the Court had acted erroneously, inasmuch as the award had left undetermined a very important matter, *viz.*, the settlement of the accounts, and the Court should, under s. 520 of Act X. of 1877, have remitted the award for the reconsideration of the arbitrator, and as it had power to remit it upon such terms as it thought fit, the Court could have allowed one year, if necessary, for the settlement of the accounts: and on this account, and also because the Court had made an order postponing the settlement of the accounts, and thereby made an order contrary to and in excess of the award, its decree must be reversed.—*Sadik Ali Khan v. Imdad Ali Khan*, 1. L. R., 3 All. 286. [Nov. 16, 1880.]

By a decree in an administration-suit, A was appointed Receiver "to manage the estate." A died, and by a subsequent order B was appointed Receiver. One of the defendants in the suit applied to have B removed from the office of Receiver on the ground of his alleged mismanagement of the estate. The application was refused. *Held* that the order of refusal was appealable, whether the former Code or the present Code of Civil Procedure was deemed to be applicable, being an order made in respect of a question arising between the parties to a suit relating to the execution of the decree.—*Mithibai v. Limji Nowroji Banaji*, 1. L. R., 5 Bom. 45, 506. [Dec. 3, 1880.]

An order under s. 556 of Act X. of 1877, dismissing an appeal for the appellant's default, is not a "decree" within the meaning of s. 2, and is not appealable.—*Mukhi v. Fakir*, 1. L. R., 3 All. 382. [Dec. 22, 1880.]

Per SPANKIE, J.—An order refusing an application to file a private award in Court is appealable as a decree. *Jokhun Rai v. Bueho Rai* (N. W. P. H. C. P. 1868, p. 353) and *Hussaini Bibi v. Mohsin Khan* (1. L. R., 1 All. 156) distinguished. *Vishnu Bhan Joshi v. Ravji Bhan Joshi* (1. L. R., 5 Bom. 18) distinguished. *Per Stuart, C.J.*—An order refusing an application to file a private award in Court on grounds not mentioned in ss. 520 and 521 is a decree, and is appealable as such.—*Janki Tewari v. Gayan Tewari*, 1. L. R., 3 All. 427. [Jan. 11, 1881.]

The expression "person referred to" in s. 2 of Act X. of 1877 means person referred to in the subsequent sections of the Code, as being required to sign or verify certain documents, and it is not a person who is not able to use a stamp that he should be unable to do so.—*Maharajah of Benares v. Debi Dial Noma*, 1. L. R., 3 All. 575. [Mar. 12, 1881.]

The Court rejected the application of the legal representative of a deceased plaintiff-appellant to enter his name in the place of such appellant on the record, on the ground that such application had not been made within the time limited by law, and passed an order that the suit should abate. *Held* that the order of the Appellate Court, passed under the first paragraph of s. 366 of Act X. of 1877, not being appealable under cl. 18, s. 588, of that Act, nor being a decree within the terms of s. 2, from which a second appeal would lie, was not appealable.—*Ahmed Ata v. Mata Badal Lal*, 1. L. R., 3 All. 844. [June 7, 1881.]

Where an order, requiring the decree-holder to give security within three days, is made under s. 546 by the Judge of the Court in which the decree was passed, and in which the execution is pending, such order is appealable as a decree under the provisions of s. 2, and s. 244, cl. c.—*Luchmeeput Singh v. Sita Nath Doss*, 1. L. R., 8 Cal. 477. [Mar. 8, 1882.]

AN order under s. 549 of the Civil Procedure Code, rejecting an appeal because security has not been furnished, as directed under that section, is a "decree" within the meaning of s. 2, from which an appeal will lie. The discretion conferred on an Appellate Court by s. 549 to demand security for costs must be properly exercised; and such discretion is not so exercised when the order requiring such security is made without notice to him calling upon him to show cause why the order should not be made.—*Siraj-ul-huq v. Khadim Hussain*, I. L. R., 5 All. 380. [Feb. 23, 1883.]

NONE but barristers and attorneys have a legal right to practise in the Bombay Court of Small Causes. Neither ss. 2 and 36 of the Code of Civil Procedure (Act No. XIV. of 1882), nor ss. 38 and 76 of the Presidency Small Cause Courts Act (No. XV. of 1882), give the pleaders of the Bombay High Court that right. The provisions of s. 47 of Reg. II. of 1827, authorizing persons holding *sanads* from the High Court to practise in the Mofussil Courts, are still in force. *Per* Bayley, West, Pinhey, and Latham, JJ., S. 2 of the Code of Civil Procedure, 1882, does not give every pleader a title to appear and plead; it only enacts that "pleader" means every person entitled to appear and plead for another in Court, and includes an advocate, a *wakil*, and an attorney of a High Court. Consequently, if pleaders or *wakils*, who are the same class of practitioners, are not entitled by law to appear or plead for another in Court, the definition of "pleader" gives them no new right or *status*. The words in s. 36 of the Code of Civil Procedure (Act XIV. of 1882), "by a pleader duly appointed to act on his behalf," do not simply mean a person duly appointed by the party in the suit, but a pleader duly appointed according to law regarding pleaders in force in the particular Court.—*The Pleaders of the High Court, In re*, I. L. R., 8 Bom. 105. [Dec. 14, 1883.]

WHERE it was shown that a judgment-creditor was himself the purchaser at an execution-sale, and the amount for which he so purchased the property of his judgment-debtor was set-off against the amount due to him under his decree, and where, on the application of the judgment-debtor, the Court passed an order setting aside the sale on the ground of fraud practised by the judgment-creditor on the judgment-debtor in connection with the sale in consequence of which fraud the property had been sold at an under-value, *held* that, inasmuch as the order involved the decision of a question between the parties to the suit relating to the execution, discharge, or satisfaction of the decree (the decree having been satisfied as far as the purchase-money bid by the decree-holder went), the order cancelling that *pro tanto* satisfaction, though not appealable under the provisions of s. 588, cl. 16, was appealable as a decree under the provisions of the Code of Civil Procedure (Act XIV. of 1882), s. 2, and s. 244, cl. c.—*Ballodeb Lal Bhagat v. Anadi Mohapatrur*, I. L. R., 10 Cal. 410. [Jan. 25, 1884.]

AN order rejecting a memorandum of appeal as barred by limitation is a "decree" within the meaning of s. 2 of the Civil Procedure Code; it is therefore appealable, and not open to revision by the High Court under s. 622 of the Code. *Gajraj Singh v. Bhagwant Singh and Dianatullah* (Weekly Notes, 1883, p. 255) and *Reg. v. Wajid Ali Shah* (I. L. R., 6 All. 438) distinguished.—*Gulab Rai v. Mangli Lal*, I. L. R., 7 All. 42. [June 29, 1884.]

THE ancestors of B mortgaged their share in a certain mehal to A. Subsequently B became entitled to this share in the mehal, and A obtained a decree on his mortgage, in execution of which the right, title, and interest of B was sold and purchased by C. Subsequently to this latter decree and sale, B obtained a decree against D for possession of certain lands which were proved to belong to this mehal. B then obtained a decree against B, in execution of which the right, title, and interest of B in this same mehal was sold and purchased by F; C and F transferred their rights under their respective purchases to E. E thereupon, as purchaser of the right, title, and interest of B from F, applied to execute the decree obtained by B against D. This application was ~~rejected by the Subordinate Judge~~, but, on appeal to the District Judge, was allowed. B thereupon applied to the High Court to have this order set aside. *Held* that the order should be set aside, inasmuch as no appeal lay from the order of the Subordinate Judge, the order not being a decree within the meaning of ss. 2 and 244 (cls. a, b, and c) of the Civil Procedure Code.—*Mohabir Singh v. Ram Baghowan Chowbey*, I. L. R., 11 Cal. 150. [Dec. 12, 1884.]

UNDER separate agreements made by them respectively with Government the plaintiff and defendant hold adjoining plots of land for building. The agreements contained the same terms and stipulations, among which were the following: "(a) The buildings to be continuous, with party-walls common to both adjoining houses. (b) All disputes regarding the cost and maintenance of party-walls to be decided by the Government surveyor, whose decision shall be binding on both parties." The plaintiff employed a contractor to erect a house upon his plot of land. The house was completed in 1870, the

north wall of which was built as a party-wall in pursuance of the condition contained in the agreement with Government. Disputes subsequently arose between the plaintiff and his contractor, which were not settled until the 26th August 1878, on which date the plaintiff paid the contractor a sum of Rs. 20,515-4-11, which included the cost of the party-wall. After the plaintiff's house had been completed, the defendant built his house upon the adjoining land, and in so doing he used a large portion of the party-wall as the southern wall of his house. He paid the plaintiff half the cost of the portion so used by him. The rear portion of the said wall was not used by the defendant, as his house did not extend so far to the rear as the house of the plaintiff. The plaintiff demanded payment of half the cost of that part of the wall not used by the defendants, but the defendants refused to pay. The plaintiff then claimed that part of the wall as his own property, and proceeded to open windows in it. The defendants objected. The plaintiff subsequently filed the present suit, claiming from the defendants payment of half the cost of the said portion of the wall not used by the defendants, and, in the event of such payment not being awarded, he prayed for a declaration that he was the sole owner of the said portion of the wall, and for an injunction restraining the defendants from disturbing him in the sole enjoyment thereof. The brother (Khatāv Luddha) of the first defendant was originally made the second defendant of the suit. He, however, disclaimed all interest in the premises; and it appeared that in 1876 the first defendant had sold the property to him (Khatāv Luddha), who in 1879 sold it to Kesserbāi, the first defendant's wife. Kesserbāi accordingly was made the second defendant in the place of Khatāv Luddha. Both the defendants pleaded limitation, and denied their liability to pay any part of the cost of that part of the wall which they did not use. The first defendant further alleged that he had paid the whole cost of the foundation and other parts of the said wall, and claimed to set-off this payment against the claim of the plaintiff. At the original hearing, Scott, J., held (1) that the part of the wall in dispute, although not used by the defendants, was a party-wall, having regard to the terms of the agreement under which the said wall was erected; (2) that Kesserbāi was liable, equally with the first defendant, to pay for this part of the wall, having purchased the property subject to the terms of the original agreement of which she presumably had notice; (3) that the suit was not barred, but that there was no right of action for the cost of the party-wall independently of the award of the Government surveyor, in whose decision lay all disputes as to such cost; and that, until his decision was given, there was no complete cause of action. Scott, J., accordingly, on 11th December 1882, decreed that the defendants were severally liable to pay the half of whatever sum the Government surveyor might certify to be due for the cost of the disputed part of the said wall, and that the defendants were entitled to set-off, in the calculation of what was due from them, the cost of any work or materials which the Government surveyor might find had been contributed by the first defendant. The case was thereupon adjourned, in order that the certificate of the Government surveyor might be obtained. The Government surveyor subsequently gave his certificate as to the cost of the unused portion of the said wall, but stated that on the evidence before him he was unable to decide as to the ownership of the foundations, &c., of the wall. The case came on again before Scott, J., who decided to take evidence on the points left undetermined by the Government surveyor. Witnesses were, accordingly, examined, and, on 11th December 1883, the Court disallowed the defendant's claim of set-off, and gave judgment for the plaintiff for half the sum certified by the Government surveyor as the cost of the disputed part of the wall. The defendants appealed. *Held* that, having regard to the terms of the agreements under which the plaintiff and defendants respectively held their property, the Court was not competent to determine the question of the defendants' set-off or the other points raised by the pleadings. These were matters to be decided by the Government surveyor, whose certificate was a condition precedent to the plaintiff's right to sue, and upon which the Court might give judgment. *Held* also that the decree of the 11th December 1882 was not a decree or an "order directing accounts to be taken" within the meaning of s. 2 of the Civil Procedure Code (Act XIV. of 1882), and that the defendants, although they had not filed an appeal against it within the period allowed by the Limitation Act, were entitled to appeal against it when appealing against the decree of 11th December 1883. — *Coverji Luddha v. Morārji Puija*, L.L.R., 9 Bom. 183. Feb. 20, 1885.

THE plaintiff's claim to redeem certain lands was rejected by a Subordinate Judge on 21st December 1882. On the 1st February 1883, the plaintiff, who was an agriculturist, presented an application for review to the Special Judge appointed under the Dekkhan Agriculturists' Relief Act. His application was rejected by that Judge, who was of opinion that the plaintiff's remedy lay in an appeal to the District Judge. The plaintiff was not informed of the result of his application to the Special Judge until the following May, at which time the Court of the District Judge was closed for vacation. On the 3rd June 1883, he presented an appeal on the opening of the District Court. The District

Judge dismissed the appeal as barred by limitation. On appeal to the High Court, a preliminary objection being taken that a second appeal would not lie, *held* that the order of the District Judge, having the force of a decree within the meaning of s. 2 of the Civil Procedure Code (Act XIV. of 1882), was appealable under s. 540 of the Code. Order discharged under the circumstances, the District Judge having given no reasons for making the order.—*Raghu Náth Gopál v. Nilu Nátháji*, I. L. R., 9 Bom. 452. [Mar. 31, 1885.]

AN order made under s. 366 of the Civil Procedure Code (Act XIV. of 1882), that a suit do abate, being virtually a decree within the meaning of s. 2, is appealable. The appellant's father having died during the pendency of an appeal lodged by him, a notice was served upon the appellant's two adult brothers; but they having failed to apply within sixty days, the appellant, who was a minor, applied, several months afterwards, to be put on the record in his deceased father's place as his legal representative, which was done. The Assistant Judge, who heard the appeal, was of opinion that, in consequence of the omission on the part of the brothers of the appellant to apply, the appeal abated, and he passed an order accordingly. *Held* that the application having been made by the minor son within the time limited by law, the order of abatement made by the Judge was wrong. Although the complete legal representation vested in the minor son and his two brothers, s. 366 of the Civil Procedure Code (Act XIV. of 1882) only required an application to be made by a person claiming to be the legal representative, in order to prevent an order of abatement being made. If neither of the brothers was willing to have his name placed on the record, the respondent was entitled to have them made defendants, so that they might be bound by the decree. The minor son could then proceed alone with the appeal.—*Bhikáji Rámchandra v. Purshotam*, I. L. R., 10 Bom. 220. [July 30, 1885.]

AN order under s. 396 of the Code of Civil Procedure declaring the rights of the parties in a partition-suit, but leaving their shares to be determined in execution of the decree, is a "decree" within the meaning of s. 2 of the Code, and an appeal, therefore, lies from such order.—In the Matter of the Petition of *Bhola Nath Dass*; *Bhola Nath Dass v. Sonamoni Dasi*, I. L. R., 12 Cal. 273. [July 30, 1885.]

AN appeal was preferred against a decree of an Original Court dismissing a suit, and the Appellate Court sent the case back for the purpose of certain evidence being taken, and certified to it. Pending that being done, the parties applied to the Appellate Court to refer the case to arbitration, and that Court referred that application to the Original Court for disposal, although the case was still pending on its own file for disposal. Subsequently another application was made to the Original Court to refer the case to arbitration, and on the 10th May the record was sent to the arbitrator with directions to submit his award within seven days. On the 12th September, as the award had not been sent in, the Original Court passed an order, recalling the record, and subsequently the award of the arbitrator, dated the 12th September, was filed. The Original Court, thereupon forwarded the record to the Appellate Court for its decision. Objections were taken to the award, but overruled, and the Appellate Court passed an order directing the case to be sent back to the Original Court, with orders to pass a formal decree in accordance with the award of the arbitrator. *Held* that a second appeal lay against the last-mentioned order, inasmuch as it amounted to a decree under the provisions of s. 2 of the Civil Procedure Code. *Held* also that the award was bad in law, because the time within which it was directed to be made had never been enlarged, and the Court's order of the 12th September recalling the record could not be taken as an indication that the time was enlarged. *Semble*, an Appellate Court has the power to refer a case to arbitration at the instance of the parties under s. 582 of the Code of Civil Procedure, 1882. *In re Sangaralingam Pillai* (I. L. R., 3 Mad. 78) cited; *Jugessur Dey v. Kritartho Moyee Dossee* (12 B. L. R. 266) cited and distinguished.—*Blugwan Dass Marwari v. Nund Lal Sein*, I. L. R., 12 Cal. 173. [Aug. 10, 1885.]

THE proceedings contemplated by s. 396 of Act XIV. of 1882 are proceedings in a suit before decree, and in order to enable the Court in that suit to determine exactly the terms of that decree. Where those proceedings, however, were left to be taken in execution of the decree, the High Court, treating it as an error in point of form, and without deciding whether or not an objection, if it had been taken, would have been fatal to the proceedings, dealt with the case in the same way as was done in *Gyan Chunder Sen v. Doorra Churn Sen* (I. L. R., 7 Cal. 318) regarding the further proceedings taken after decree declaring the rights of the several parties, as proceedings to obtain a decree on further consideration. Where, in a partition-suit, an order was made in the course of such proceedings, by which the position of some of the parties to the suit was determined, but no declaration was made of the exact rights of each of the parties, *held*, it was a mere interlocutory order, and no appeal would lie from it. *Semble*, such an order is not a decree

within the terms of s. 2, Act XIV. of 1882. *Bholanath Dass v. Sonamoni Dasi* (I. L. R., 12 Cal. 273) distinguished.—*Bhoobun Moyi Dabaa v. Shurut Sundery Dabaa*, I. L. R., 12 Cal. 275. [Aug. 12, 1885.]

WHERE an Appeal Court made a decree or order directing a commission to issue directed to an amrin to make a partition of certain property into certain specified shares, and to allot the shares to the parties to the suit, *held* that such order amounted to a decree within the meaning of s. 2 of the Code of Civil Procedure, and that, though called a decree, it was, in fact, an order in the terms of s. 396 of the Code, and was a proper order to make.—*Bopin Behari Moduck v. Lal Mohun Chattopadhaya*, I. L. R., 12 Cal. 209. [Aug. 31, 1885.]

THE definition of "decree" in s. 2 of the Civil Procedure Code means that where the proceeding of the Court finally disposes of the suit, so long as it remains upon the record, it is a "decree." *Held* by the Full Bench that an order passed under s. 381 of the Civil Procedure Code, dismissing a suit for failure by the plaintiff to furnish security for costs as ordered, was the decree in the suit, and appealable as such, and consequently was not open to revision by the High Court under s. 622 of the Code.—*Williams (J. R.) v. Brown (T. A.)*, I. L. R., 8 All. 108. [Jan. 23, 1886.]

No appeal lies under any of the provisions of s. 588 of the Civil Procedure Code from an order under s. 44, rule a, rejecting an application for leave to join another cause of action with a suit for the recovery of immoveable property. In a plaint filed in the Court of a Subordinate Judge the plaintiff claimed to recover possession of a house, together with some grain which was stored in it. The plaintiff applied to the Subordinate Judge for leave under s. 44, rule a, of the Civil Procedure Code, to join the claim for grain with the claim for possession of the house. The Subordinate Judge refused leave, and returned the plaint, with directions that the plaintiff should institute two suits, for recovery of the house and the grain respectively, in the Court of the Munsif. *Held* that the Subordinate Judge's order was substantially an order rejecting the plaint, on the ground that the plaintiff had joined a cause of action with a suit for recovery of immoveable property; that, although this might have been a misapplication of s. 44, rule a, of the Code, its effect was to reject the plaint; that such an order was a decree with reference to the definition in s. 2, and was appealable as such to the District Judge; and that, therefore, a second appeal lay in the case to the High Court, and that Court was not competent to interfere in revision under s. 622.—*Bandhan Singh v. Solhu*, I. L. R., 8 All. 191. [Feb. 18, 1885.]

ON an application under s. 232 of the Civil Procedure Code by the purchaser of a decree to be allowed to execute it, two of the judgment-debtors objected that the purchase was *benami* for the other judgment-debtor, and that they had paid off the decree to the original decree-holder. The Munsif found both objections against them, and allowed the purchaser to execute the decree. *Held* that the question was one between the parties to the suit or their representatives relating to the execution, discharge, or satisfaction of the decree, and that the decision of that question was a decree under s. 2 and 244 of the Code, and therefore appealable, and a second appeal lay therefrom to the High Court.—*Afzal v. Ram Kumar Bhudra*, I. L. R., 12 Cal. 610. [Mar. 5, 1886.]

AN order under s. 243 of the Civil Procedure Code staying execution of a decree determines a question relating to the execution of the decree within the meaning of s. 244, and is, therefore, a decree within the meaning of s. 2. An appeal, therefore, lies from such order.—*Steel v. Ichclameyi Chowdhraim*, I. L. R., 13 Cal. 111. [Mar. 18, 1886.]

S. 442 of the Civil Procedure Code refers to a case where the plaint on the face of it appears to have been filed by a person who was a minor. Where, in a suit, the plaintiffs declare themselves as adults, and on the objection of the defendants an issue was raised and inquired into on the question of age, *held* that the order passed under the circumstances, although it professed to have been made under s. 442 of the Procedure Code, must be treated as one rejecting the plaint or dismissing the suit on the ground that the suit was instituted by persons who were established on the evidence to be minors, and was appealable as a decree within the meaning of s. 2 of the Code. The words, "rejecting the plaint," in s. 2, are not limited to the cases provided for in ss. 53, 54. *Held* also that the defendant, not having taken an objection to the suit on the ground of the minority of the plaintiffs whilst it was pending in appeal to the High Court, were precluded from raising it on remand.—*Beni Ram Bhutt v. Ram Lal Dhukri*, I. L. R., 13 Cal. 189. [Mar. 30, 1886.]

HELD that an order rejecting an application for permission to sue as a pauper, and striking the case off the Court's file, on the ground that the applicant had previously withdrawn the application and entered into a new contract with the defendants, was a

"decree" within the meaning of s. 2 of the Civil Procedure Code, and appealable as such. —*Baldeo v. Gula Kuar*, I. L. R., 9 All. 129. [Dec. 6, 1886.]

AN application under s. 93 of the Bengal Tenancy Act, 1855, is not a suit between a landlord and tenant within the meaning of s. 143, and no appeal lies from an order rejecting such an application. —*Hussain Bux v. Mutookdharee Lall*, I. L. R., 14 Cal. 312. [Feb. 10, 1887.]

3. The enactments specified in the first schedule hereto annexed are hereby repealed to the extent mentioned in the third column thereof. But all notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed, and forms framed under any such enactment, shall, so far as they are consistent with this Code, be deemed to be respectively published, made, appointed, filed, prescribed, and framed hereunder.

Enactments repealed. Extending to Provincial S. C. Courts.

And when, in any Act, Regulation, or notification passed or issued prior to the day on which this Code comes into force, reference is made to Act No. VIII. of 1859, Act No. XXIII. of 1861, or the "Code of Civil Procedure," or to Act No. X. of 1877, or to any other Act hereby repealed, such reference shall, so far as may be practicable, be read as applying to this Code or the corresponding part thereof.

Save as provided by section 99A, nothing herein contained shall affect any proceedings prior to decree in any suit instituted or appeal presented before the first day of June 1882, or any proceedings after decree that may have been commenced and were still pending at that date.

Every appeal pending on the twenty-ninth day of July 1879, which would have lain if this Code had been in force on the date of its presentation, shall be heard and determined as if this Code had been in force on such date; and every order passed before the same day, purporting to transfer a case to a Collector under Act No. X. of 1877, section 320, and every notification published before the same day, purporting to be issued under Act No. X. of 1877, section 360, shall be deemed to have been respectively passed and issued in accordance with law.

THE effect of Act I. of 1868, s. 6, and Act X. of 1877, s. 3, taken together, is that the chapter of the new Code of Civil Procedure which deals with execution of decree is prospective, and does not affect proceedings already commenced. —*In re Ratansi Kallianji* and six others, I. L. R., 2 Bom. 148 [Oct. 13, 1877]. See also *I. L. R.*, 3 Cal. 662 [May 14, 1878]; also *I. L. R.*, 4 Cal. 825 [Feb. 19, 1879]. But see *I. L. R.*, 2 All. 74 [Nov. 6, 1878].

IN all suits instituted before Act X. of 1877 came into force, in which an appeal lay to the High Court under Act VIII. of 1859, an appeal still lies, notwithstanding the repeal of that Act by Act X. of 1877. *Per* Garth, C.J. — A suit is a "judicial proceeding," and the words "any proceeding" in Act I. of 1868, s. 6, include all proceedings in any suit from the date of its institution to its final disposal, and therefore include proceedings in appeal. The word "procedure" in Act X. of 1877, s. 3, has not the same meaning as the word "proceedings" in the above-mentioned section. The proceedings in a suit instituted before Act X. of 1877 came into force, including a special appeal if the old Code allowed one, go on to the end of the suit, notwithstanding the repeal of the old Code. The "procedure" (i. e., the machinery by which those proceedings are conducted) is, after decree, to be that provided by the new Code. *Per* Jackson, J. — The word "decree," as defined in Act X. of 1877, does not include "orders," either original or appellate, upon matters arising in the course of a suit or in execution of a decree. The power of the High Court to hear appeals from the Civil Courts in the interior is regulated by Act VI. of 1871. Act I. of 1868, s. 6, covers proceedings taken in execution of

of the Commissioner for taking accounts, by which he refused to require the defendants to give inspection of certain books, was not an order within the contemplation of that section, and was, therefore, not appealable.—*Rustomji v. Kessowji Naik*, I. L. R., 8 Bom. 287. [April 18, 1894.]

HAVING regard to s. 3 of Act XIV. of 1892, it is clear that the word "Code" in Sch. II., art. 171B of Act XV. of 1877, applies to the present Code of Civil Procedure (Act XIV. of 1882); and that, therefore, the word "defendant" in s. 308 of that Code, when read with s. 542, must be held to include "respondent."—In the Matter of the Petition of Soshi Bhusan Chand; *Soshi Bhusan Chand v. Grish Chunder Talukdar*, I. L. R., 11 Cal. 694. [Jan. 27, 1885.]

Saving of certain Acts affecting Central Provinces, Burma, Panjáb, and Oudh.

4. Save as provided in the second paragraph of section 3, nothing herein contained shall be deemed to affect the following enactments (namely):—

The Central Provinces Courts Act, 1865 :

The Burma Courts Act, 1875 :

The Panjáb Courts Act, 1877 :

The Oudh Civil Courts Act, 1879 :

or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council, prescribing a special procedure for suits between landholders and their tenants or agents :

or any law heretofore or hereafter passed under the India Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council, providing for the partition of immoveable property.

And where, under any of the said Acts, concurrent civil jurisdiction is given to the Commissioner and the Deputy Commissioner, the Local Government may declare which of such officers shall, for the purposes of this Code, be deemed to be the District Court.

A SALE of the tenants' interest in certain land having taken place under ss. 39 and 40 of the Rent Recovery Act, the Deputy Collector refused to issue a sale-certificate to the purchaser on the ground that the sale had been irregularly conducted. *Held* that under s. 35 of the Rent Recovery Act the purchaser was entitled to a sale-certificate. *Held* further that the High Court had no power to review the proceedings of the Deputy Collector under s. 622 of the Code of Civil Procedure.—*Velli Periya Mira v. Moidin Fadsia*, I. L. R., 9 Mad. 332. [Feb. 27, 1886.]

5. The chapters and sections of this Code specified in the second schedule hereto annexed extend (so far as they are applicable) to Courts of Small Causes constituted under Act No. XI. of 1865,* and to all other Courts (other than the Courts of Small Causes in the towns of Calcutta, Madras, and Bombay) exercising the jurisdiction of a Court of Small Causes. The other chapters and sections of this Code do not extend to such Courts. Extending to Provincial S. C. Courts.

THE effect of Act X. of 1877, s. 5, coupled with sch. 2, is to render the whole of Ch. XX. (relating to insolvent debtors) inapplicable to a Mufassal Small Cause Court, notwithstanding the words "any Court other than a District Court" and "any Court situate within his district," which occur in that section. Consequently the Government Resolution of 3rd April 1878, investing the Judge of the Small Cause Court at Ahmedabad with power, under the said chapter, to adjudicate in insolvency matters, is *ultra vires* and invalid.—*Lallu Ganosh v. Ranchhod Kalandás*, I. L. R., 2 Bom. 641. [July 2, 1878.]

* Superseded by the Provincial Small Cause Courts Act (IX. of 1887).

UNDER s. 360 of the Code of Civil Procedure, the Local Government cannot invest a Mufasssal Small Cause Court with the insolvency jurisdiction conferred on District Courts by Ch. XX. of the said Code, inasmuch as, by reason of s. 5, Ch. XX. does not extend to such Courts of Small Causes.—*Séthu v. Venkataramá*, I. L. R., 9 Mad. 112. [Oct. 3, 1885.]

Saving of jurisdiction and procedure—

(a) of Military Courts of Request;

(b) of a single officer duly appointed in the Presidency of Bombay to try small suits in military bázárs at cantonments and stations occupied by the troops of that Presidency; or

(c) of Village Munsifs and Village Pancháyats in Madras;

(d) of Recorder of Rangoon sitting as Insolvent Court.

6. Nothing in this Code affects the jurisdiction or procedure—

(a) of Military Courts of Request;

(c) of Village Munsifs or Village Pancháyats under the provisions of the Madras Code; or

(d) of the Recorder of Rangoon sitting as an Insolvent Court in Rangoon, Maulmain, Akyab, or Bassein;

or shall operate to give any Court jurisdiction over suits of which the amount or value of the subject-matter exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

THE Deputy Commissioner of Akyab, sitting as District Judge, has power to entertain applications under Act X. of 1877, Ch. XX. S. 6 (d) of that Act interposes no obstacle in the way of his dealing with such applications, nor does the exercise of such power in any way "affect the jurisdiction of the Recorder of Rangoon" sitting as an Insolvent Court in Akyab within the meaning of that section.—*In re Abdool Hamed*, I. L. R., 4 Cal. 94. [June 20, 1878.]

7. With respect to

(a) the jurisdiction exercised by certain jágirdárs and other authorities

Saving of certain Bombay laws invested with powers under the provisions of Bombay Regulation XIII. of 1830 and Act No. XV. of 1840 in the cases therein mentioned; and

(b) cases of the nature defined in the enactments specified in the third schedule hereto annexed.

the procedure in such cases, and in the appeals to the Civil Courts allowed therein, shall be according to the rules laid down in this Code, except where those rules are inconsistent with any specific provisions contained in the enactments mentioned or referred to in this section.

8. Save as provided in sections 3, 25, 86, 223, 225, 386, and Chapter

Presidency Small Cause Courts XXXIX., "and by the Presidency Small Cause Courts Act, 1882,"* this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras, and Bombay.

But the Local Government may, by notification published in the official Gazette, extend to any such Court this Code, or any part thereof, except so far as relates to appeals and reviews of judgment.†

A, a British subject, executed a bond (unregistered), hypothecating property in British India to B. After the limitation period in British India had expired, B sued upon the bond in a French Court, and, having obtained an *ex parte* decree, sued for the

* The words quoted have been inserted by Act XV. of 1882.

† Act XV. of 1882 repeals para. 2 of s. 8 of Act X. of 1877. But Act X. of 1877 has been repealed by Act XIV. of 1882. The repeal evidently refers to para. 2 of s. 8 of Act XIV. of 1882.

enforcement in British India. A pleaded that no notice was given him of the proceedings in the French Court, and B's suit was dismissed. A then applied to the French Court to cancel its *ex-parte* decree, pleading that, inasmuch as the bond was executed in British India, the French Court was bound to apply the British Indian laws of registration and limitation. On a trial on the merits, the French Court found that the bond was executed in French territory, and decided, confirming its first decree, that the British statutes pleaded did not apply. A appealed from the decree to a French Appellate Court, and his appeal was dismissed. B sued in British India on the French judgments, and A now pleaded that the French Courts had not, at the time those judgments were given, jurisdiction over him. The Court of first instance decreed B's suit, and the lower Appellate Court dismissed it on appeal. *Held*, restoring the decree of the original Court, that A, though a British subject, and not, in the particular circumstances of the case, subject to the jurisdiction of the French Court, had, nevertheless, equitably estopped himself from pleading that those Courts had not jurisdiction over him. In suing as a plaintiff, the Courts of a country to which he owed no allegiance, he had voluntarily submitted to their jurisdiction, and he could not afterwards object to the validity of the judgments of those Courts on the ground that they had no jurisdiction over him. *Held* also (following 8 M. H. C. R. 14) that where the defendant in a suit in a foreign Court, without objecting to the competency of the Court to entertain the suit, appeared in that Court, and took his chance of a judgment in his favour, he placed himself for the time under the jurisdiction of the Court, and could not afterwards take exception thereto. An irregularity, even if proved, in the procedure of a foreign Court, was not sufficient reason for refusing to enforce a judgment of such Court. Where limitation was merely prohibitive of the remedy, and not destructive of the right, the judgment of a foreign Court was not open to objection on the ground that a suit on the contract would be barred by the law of limitation applicable in the country in which the contract was made. The mere possession of property in a foreign country did not, by reason of the protection enjoyed, confer on the Courts of that country jurisdiction over a foreigner neither domiciled nor resident therein in respect of matters unconnected with the property. Second Appeal No. 407 of 1878.—*Nalathanli Mudahar v. Ponnasami Pillai*, 4 Ind. Jur. 239.

WHILST the pecuniary jurisdiction of the Small Cause Court was limited to Rs. 1,000 the plaintiffs brought a suit for that amount for damages for breach of a certain contract after abandoning the excess, and in that suit they elected a non-suit under s. 53, Act IX. of 1850. *Held*, in a suit brought in respect of the same damages for the full amount due to them, that the plaintiffs were not precluded, by their having abandoned the excess in the former suit, from recovering the full amount sued for.—*G. C. Simson v. Gora Chand Das*, 1. L. R., 9 Cal. 473. [Feb. 2, 1883.]

THE Madras Court of Small Causes has no jurisdiction in insolvency. The second paragraph of s. 8 of the Code of Civil Procedure, 1882, which authorized the Local Government, by notification published in the official Gazette, to extend to the Presidency Small Cause Court certain portions of the said Code, is repealed by the Presidency Small Cause Court Act (s. 2 of Act XV. of 1882), and consequently the notification of the Governor in Council of Port St. George, dated 25th February 1879, conferring on the Madras Court of Small Causes jurisdiction in insolvency, being repugnant to s. 8 of the Code of Civil Procedure, 1882, as amended, if otherwise valid, ceased to have effect when Act XV. of 1882 came into force.—*In re S. P. Waller*, 1. L. R., 6 Mad. 430. [April 20, 1883.]

Division of Code.

9. This Code is divided into ten Parts as follows:—

- The first Part : Suits in General.
- The second Part : Incidental Proceedings.
- The third Part : Suits in particular Cases.
- The fourth Part : Provisional Remedies.
- The fifth Part : Special Proceedings.
- The sixth Part : Appeals.
- The seventh Part : Reference to and Revision by the High Court.
- The eighth Part : Review of Judgment.
- The ninth Part : Special Rules relating to the Chartered High Courts.
- The tenth Part : Certain Miscellaneous Matters.

PART I. OF SUITS IN GENERAL.

CHAPTER I.

OF THE JURISDICTION OF THE COURTS AND RES JUDICATA.

No person exempt from jurisdiction by reason of descent or place of birth.

10. No person shall, by reason of his descent or place of birth, be, in any civil proceeding, exempted from the jurisdiction of any of the Courts.

11. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is barred by any enactment for the time being in force.

Explanation.—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Suits as to religious rites or ceremonies, which involve no question of the right to property or to an office, are not suits of a civil nature, nor are they intended to be brought within the jurisdiction of the Civil Courts. A suit, therefore, by the plaintiffs, as members of a committee of management of a Hindu temple, to compel the hereditary priests of the temple to take out certain ornaments from the treasury of the managing committee, and to obtain a declaration that the said ornaments, after they had been so taken out of the treasury, were in the custody of the priests, and that they were responsible for their safe custody, was held unsustainable. S. 11 of the Civil Procedure Code (Act X. of 1877) introduces no new law, but merely declares the law as it has always been administered.—*Vasudev and another v. Vannaji and others*, 1. L. R., 5 Bom. 80. [Sep. 21, 1880.]

ALTHOUGH it is not the duty of a Civil Court to pronounce on the truth of religious tenets, nor to regulate religious ceremony, yet, in protecting persons in the enjoyment of a certain status or property, it may incidentally become the duty of the Civil Court to determine what are the accepted tenets of the followers of a creed, and what is the usage they have accepted as established for the regulation of their rights *inter se*. A claim to the exclusive right to perform certain portions of the religious worship in a Hindu temple, and to restrain a rival sect from joining in such worship otherwise than as ordinary worshippers, can be enforced by the decree of a Civil Court. A claim to damages for the loss of honours and voluntary offerings which would have been made by worshippers at a temple to the holders of a religious office therein, had the latter not been disturbed by the defendants in the performance of the duties of such office, is not enforceable by law.—*Krishnasami Tataharyar and others v. Krishnamacharyar and others*, 1. L. R., 5 Mad. 313. [May*1, 1882.]

IN execution of a decree certain land belonging to the judgment-debtor was sold. Subsequently the auction-purchaser, who had not got possession, re-sold the land to a third party, and gave him the certificate. The latter then applied to the Court to be put into possession; but, having failed in those proceedings, owing to some irregularity in the description of the boundaries of the property, he instituted a regular suit against the judgment-debtor to obtain possession. On a plea that such suit would not lie, as the plaintiff could have got possession in the miscellaneous proceedings, held that, having regard to the provisions of art. 138 of sch. F. of Act XV. of 1877 and of s. 11 of Act XIV. of 1882, such suit was maintainable.—*Seru Mohun Bania v. Bhagobau Din Pandey*, 1. L. R., 9 Cal. 602. [Feb. 10, 1883.]

THE ordinary Civil Courts have jurisdiction to try a suit for dissolution of a partnership, their jurisdiction to try such suits not being ousted by s. 205 of the Contract Act 1872.—*Ramjiwan Mal v. Chand Mal* 1. L. R., 7 All. 227. [Dec. 13, 1884.]

ACT IX of 1861 does not debar a District Munsif's Court from entertaining a suit by a Hindu father to recover possession of his minor son alleged to be illegally detained by the defendant.—*Krishna v. Reade* 1. L. R., 9 Mad. 31. [Mar. 10, 1885.]

12. Except where a suit has been stayed under section 20, the Court shall not try any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit for the same relief between the same parties, or between parties under whom they or any of them claim, pending in the same or any other Court, whether superior or inferior, in British India, having jurisdiction to grant such relief, or in any Court beyond the limits of British India established by the Governor-General in Council and having like jurisdiction, or before Her Majesty in Council.

Pending suits. Extending to Provincial S. C. Courts.

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action.

THE judgment of a foreign Court, obtained on a decree of a Court in British India, is no bar to the execution of the original decree.—*Fakuruddeen Mahomed Assan v. Official Trustee of Bengal*, I. L. R., 7 Cal. 82. [Mar. 28, 1881.]

13. No. Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court of jurisdiction competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Res judicata. Ditto.

Explanation I.—The matter above referred to must, in the former suit, have been alleged by one party, and either denied or admitted, expressly or impliedly, by the other.

Explanation II.—Any matter which might, and ought to, have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation III.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purpose of this section, be deemed to have been refused.

Explanation IV.—A decision is final within the meaning of this section when it is such as the Court making it could not alter (except on review) on the application of either party, or reconsider of its own motion. A decision liable to appeal may be final within the meaning of this section until the appeal is made.

Explanation V.—Where persons litigate *bona fide* in respect of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purpose of this section, be deemed to claim under the persons so litigating.

Explanation VI.—Where a foreign judgment is relied on, the production of the judgment duly authenticated is presumptive evidence that the Court which made it had competent jurisdiction, unless the contrary appear on the record; but such presumption may be removed by proving the want of jurisdiction.

A OBTAINED a decree against B, the widow of C, for possession of property mortgaged by her to A's father. E and D, the reversionary heirs of C, intervened in the suit, and the decree was made as against them. In the schedule to the plaint, the mortgaged property was described as including mauza A and 8 annas of mauza B, and mauza B was described as "usli with dakhili," that is, mauza C and mauza D, but in the body

of the plaint it was described simply as mauza B. After A's death, D and E commenced an action against his son F for an adjudication of their right to 16 annas of mauza D, and it was found that mauzas C and D were not "usli with dakhili," but two distinct mauzas, and that the former mortgage-deed had not included mauza D. *Held* (affirming the judgment of the High Court at Calcutta) that in the first suit the Court was called upon to adjudicate upon the property as described in the body of the plaint and not as described in the schedule, and that the decree in that suit was no bar to the second suit.—*Babu Het Narain Singh v. Babu Ram Prasad Singh*, 4 Ind. Jur. 471.

A AND B executed a document providing for the repayment of a loan to C. C subsequently sued A and B for the amount of the loan, basing the suit upon an alleged oral agreement by A and B to repay their proportionate shares of the debt. This suit failed, and C brought a fresh suit to recover the same amount on the document executed by A and B. *Held* (Kernan, J., dissenting) that the matter in issue in the second suit was substantially different from that in issue in the first, and that ss. 13 and 43 of the Civil Procedure Code did not apply. S. 13, expl. 2, did not apply, there being a separate cause of action in the second suit, which could not have been made a ground of attack in the first. *Held* that a document which provided for the delivery of paddy in addition to a specific sum of money was not a "promissory note." To ensure as a promissory note, an instrument must contain a promise to pay money only. Referred case 6 of 1878.—*Muthu Chetti v. Muthan Chetti*, 4 Ind. Jur. 567.

IN 1852 A acquired a plot of land (I.) by Government grant. The adjoining plot (II.) had in 1851 been granted by *gautidari* lease to D; but in 1853 another lease of it was granted, by a person who claimed to be the agent of the owner, to E. In 1859, E sued A for trespass on a piece of land, which he alleged to be part of II., but which A had cultivated as being part of I., and obtained judgment, against which A appealed to the Privy Council. Pending the appeal D sued for possession of II., and obtained judgment against E. D failed to pay his rent, and II. was up for sale, and sold to B, who thereupon obtained leave to be made a party to the appeal to the Privy Council, and filed a case in which he alleged that the interest of the original respondent had ceased, and that he himself was precluded from enforcing his rights pending the appeal. The Judicial Committee allowed the appeal on the ground that the disputed land belonged to F, but they stated that they did not adjudicate upon any question of title as between the persons interested in II., and they made no order for payment of costs by B. B afterwards sued A's executor for possession of the disputed land. *Held* (reversing the judgment of the High Court at Calcutta) that B's claim was *res judicata* by the previous judgment of the Privy Council. A direction as to costs cannot alter the effect of a judgment as between the parties to the action.—*Belchambers v. Ashootosh Dhur*, 4 Ind. Jur. 527.

ACCORDING to the rule of *res judicata* in England, in order to make an adjudication in one suit a bar to the plaintiff's proceeding in another, it must be shown, 1st, that the parties in both suits are the same; 2nd, that the thing sought to be recovered is the same; 3rd, that the grounds upon which the claim is founded are the same; and, 4th, that the character in which the parties sue, or are sued, is the same.—*Per Garth, C.J.*—*Denobundoo Chowdhry v. Kristomonee Dossee*, 1. L. R., 2 Cal. 152. [Aug. 14, 1876.]

MATTER in issue may be defined as matter from which, either by itself or in connection with other matter, the existence, non-existence, nature, or extent, of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows (s. 3, Evidence Act); and the first and second explanations shew that matter will be considered to have been directly and substantially in issue, if it is matter in issue which might and ought to have been put forward by either plaintiff or defendant in the previous suit. If the plaintiff might have made the same claim in the prior action, but did not, the subsequent suit will be barred.—*Denobundoo Chowdhry v. Kristomonee Dossee*, 1. L. R., 2 Cal. 152. [Aug. 14, 1876.]

UNDER Act X. of 1877, s. 13, the law is now the same as it was under Act VIII. of 1859, prior to the passing of Act I. of 1877.—*Naranji Bhikhabhai v. Dipa Umed*, 1. L. R., 3 Bom. 3. [Feb. 4, 1878.]

AN application by petition under Act II. of 1874, s. 63, is a suit within the meaning of Act X. of 1877, s. 13, and therefore is barred by the disposal of a former application in the same matter under the same section or under Act XXIV. of 1867, s. 60, which the Act of 1874 repeals. This is so whether the order is one for payment of money or one dismissing the petition.—*Eliza Smith v. Secretary of State*, 1. L. R., 3 Cal. 340. [Mar. 4, 1878.]

CERTAIN immoveable property was attached in execution of a money-decree held by A, dated 22nd August 1871. On 1st April 1872, the same property was subsequently attached in execution of a decree held by B, dated 19th August 1871, which directed the sale of the property in satisfaction of a charge declared thereby. The property was sold in execution of the decree. The Munsif directed that the proceeds of the sale should be paid to B. A, who claimed them on the ground that he had first attached the property, appealed against this order. The Judge, declaring that A was entitled to the proceeds, reversed the Munsif's order. A then obtained an order from the Munsif, directing B to refund the money, which he did, and it was paid to A. B sued A to recover the money by establishment of his prior right to the same, and for the cancellation of the Judge's order, alleging that the same was made without jurisdiction. *Held* (by a majority of the Full Bench) that the suit was one for money received by the defendant for the plaintiff's use, and was, therefore, governed by sch. 2, art. 60. *Held* (by the Division Bench) that A was not entitled, as the first attaching creditor, to the sale-proceeds.—*Ram Kishan v. Bhawani Das*, 1 L. R., 1 All. 333 [Dec. 21, 1876]. See also *Bhawani Kuar v. Bikh Ram*, 1 L. R., 2 All. 354 [Aug. 12, 1879].

THE plaintiff sued to recover possession of certain houses and grounds as belonging to his zamindari, setting forth that the premises in question had been occupied by his paternal grandmother, on whose death the defendants had taken wrongful possession. The defendants claimed to be legally entitled to the premises in question, and contended that the plaintiff's suit was barred under this section by reason that the plaintiff had already, during his grandmother's lifetime, brought a suit against her and the defendant's father, as a co-defendant, to establish his right to the same premises, which suit has been dismissed. The defendants also pleaded limitation. It appeared that in the former suit the relief sought by the plaintiff was substantially to restrain his grandmother from acts of waste in alienating property which had belonged to her deceased husband by assigning it to her co-defendant; but that, as regards the property now claimed, although it was mentioned in the plaint, no charge had been made that she had assigned it, or intended to assign it, to bar co-defendant, nor any allegation to show that the co-defendant had any interest in it. *Held*, reversing the decisions of the lower Courts, that, under the circumstances, the decision in the former suit was not a decision in a suit between the same parties or parties under whom they claimed, and that the cause of action in the present suit was not determined in the former suit. *Held* also that the defendant's plea of limitation could not be determined without a finding as to whether the plaintiff's grandmother, who died within the period of limitation, had held the premises with the plaintiff's leave, or as a trespasser.—*Zamindar of Pittapuram v. Proprietors of Kolanka*, 1 L. R., 2 Mad. 23. [July 2, 1878.]

A, HAVING sued B for possession of a piece of land, and obtained a decree for possession of a portion only, entered into an agreement, by the terms of which he was to take a greater part of the land than he was entitled to under the decree, upon the condition that he (A) should not prefer an appeal, and that, in the event of his doing so, the whole land claimed in the suit should become the property of B. In contravention of this agreement A appealed and obtained a decree for possession of the entire piece of land, whereupon B instituted a suit, claiming to have possession of the same in terms of the agreement. *Held* that the agreement was valid, although its effect was practically to render the former suit inoperative; and, further, that the previous suit between the parties was no bar to B's suit, a new cause of action having arisen upon the breach of the agreement.—*Jati Ram Talookdar v. Dass Ram Kolita*, 3 C. L. R. 574. [Jan. 8, 1879.]

A CLAIM to certain pecuniary benefits and payments in kind, which a plaintiff alleges himself to be entitled to receive from the defendants in respect of the performance of certain religious services, is a claim which the Courts of Justice are bound to entertain; and if, in order to determine the plaintiff's right to such benefits, it becomes necessary to determine incidentally the right to perform the services, the Courts may try and must decide that right.—*Krishnama v. Krishnasaya*, 1 L. R., 2 Mad. 62. [Mar. 18, 1879.]

THE plaintiff brought in 1876 a suit against the defendant in respect of the same subject-matter, and founded on the same cause of action as the present suit. Issues of fact arising on the merits were inquired into; but a certificate of the Collector under s. 6 of the Pensions Act (No. XXIII. of 1871), which was necessary to give jurisdiction to the Court, not having been obtained, the claim was rejected on that ground. *Held* that the Court not having legally pronounced on the merits of the former case, the opinions expressed on the issues were not *res judicata* so as to bar the maintenance of the present suit. The non-production of the Collector's certificate does not necessarily constitute

such a want of due diligence on the plaintiff's part as to disentitle him to the deduction of time allowed by s. 14 of the Limitation Act (XV. of 1877).—Putali Meheti v. Tulja, I. L. R., 3 Bom. 223. [April 3, 1879.]

THIS section does not require a plaintiff at once to assert all his titles to property, or to be thereafter estopped from advancing them. The maxim, *Nemo bis vexari debet in eodem causâ*, cannot apply where the right on which the second suit is brought is not the same as that asserted in the former suit.—Sadaya Pillai v. Chinni, I. L. R., 2 Mad. 352. [May 5, 1879.]

PLAINTIFF sued for a declaration of mourasi mokurari rights to certain lands and for mesne-profits, alleging that he had been wrongfully ejected by the predecessors in title of the defendants. A previous suit on the same cause of action was heard and dismissed on the ground of limitation. *Held* that the present suit was not barred (as *res judicata*) under s. 2, Art VIII. of 1859 (corresponding with Act X. of 1877, s. 13), inasmuch as the first suit having been brought after the period allowed by law, the Court in which it was instituted was not competent to hear and determine it.—Brindabun Chunder Sirkar v. Dhununjoy Nushkur, I. L. R., 5 Cal. 246. [May 16, 1879.]

IN a suit for rent and for ejectment the defendant pleaded that his tenure was transferable and *istemvari*, and consequently protected by the Rent Law. In a former suit for arrears of previous years, in which the defendant pleaded that his tenure was *istemvari*, the plaintiff obtained a decree for ejectment on non-payment of rent within 15 days. In that case the defendant saved his tenure by payment within the time stated. *Held* that, inasmuch as the defendant might, in the former suit in which the nature of the tenure was put in issue, have urged that his tenure was both transferable and *istemvari*, he could not, in the present suit, be allowed to alter his defence, and rely upon the tenure being transferable. Woomatara Debi v. Umopoorna Dossee (2 B. L. R., P. C., 158) cited and followed. (Compare new Act X. of 1877, s. 13, expl. 2.)—Dinomoyi Dabia Chowdhrair v. Anungo Moyi, 4 C. L. R. 599. [July 14, 1879.]

IN order to constitute the bar of *res judicata* it is not sufficient merely that an issue on the same point should have been raised in the former suit, although that issue may have been incidentally decided; but it must appear that the matter referred to was alleged by one party, and either denied or admitted, expressly or impliedly, by the other.—Shama Churn Chatterjee v. Prasunno Coomar Santikace, 5 C. L. R. 251. [Sep. 3, 1879.]

WHEN a question of title has to be, and is, decided by a Court of competent jurisdiction with reference to the value of the subject-matter in dispute, such decision, or the ultimate decision upon appeal from such decision, is final, and the question of title becomes a *res judicata* as between the parties to the suit, although it may have the effect of determining the title to an estate or estates, the value of which exceeds the jurisdiction of the Court in which the suit was instituted. *Per* White, J.—In considering, on the hearing of an appeal, the competency of a Court for the purpose of deciding upon a question of *res judicata*, the powers of the Court in which the suit was instituted, and not those of the Court in which the suit was decided on appeal, must be looked to.—Toponidhee Dhirji Gir Gosain v. Sreeputty Sahance, I. L. R., 5 Cal. 832. [April 8, 1880.]

M sued R in the Court of the Munsif for a bond, alleging that he had satisfied the bond-debt, and for a certain sum which he alleged had been paid by him to R in excess of the bond-debt. On the 24th November 1875, the Munsif, having taken an account, and found that Rs. 188-7-4 of the bond-debt were still due, made a decree dismissing the suit. R appealed to the Subordinate Judge, who, on the 16th September 1876, finding that Rs. 520-2-2 of the bond-debt were still due, affirmed the Munsif's decree. M appealed to the High Court on the ground that an appeal by R did not lie to the Subordinate Judge, as R was not aggrieved by the Munsif's decree. The Division Bench before which the appeal came, on the 10th August 1877, holding that R was not competent to appeal to the Subordinate Judge, set aside the proceedings of the Subordinate Judge. In deciding the case the Division Bench made certain observations to the effect that the account between the parties was not finally settled, but might be taken again in a fresh suit. In November 1877, M instituted a fresh suit against R to recover the bond on payment of Rs. 188-7-4, the sum found by the Munsif in the former suit to be due by him to R. *Held* on the question whether the finding of the Munsif in the former suit was final and conclusive between the parties, or the account might be again taken, that that finding being a finding on a matter directly and substantially in issue in the former suit, which was heard and finally decided by the Munsif, was final and conclusive between the parties, and the account could not be again taken. *Held* also that the observations of the Division Bench in the former suit were mere "*obiter dicta*," which did not bind the Court's disposing of the fresh suit.—Mohán Lall v. Ram Dial, I. L. R., 2 All. 843. [April 22, 1880.]

A HINDU of the Southern Maratha country, having two sons undivided from him, died in 1871, leaving a will disposing of ancestral estate substantially in favour of his second son, excluding the elder, who claimed his share in this suit. In 1861 a suit brought by this elder son against his father and brother to obtain a declaration of his right to a partition of the ancestral estate was dismissed, on the ground that he had no right in his father's lifetime to compel a partition of moveables; and that as to the immoveables the claim failed, because they were situate beyond the jurisdiction of the Court. *Held*, first, that this suit was not barred under Act VIII. of 1859, s. 2; the proceeding of 1861 not having amounted to an adjudication between the brothers as to their rights in the estate arising on their father's death. Secondly, that the suit was not barred under the Limitation Act (XIV. of 1859), s. 1, cl. 13. As to the immoveables, setting aside the fact that the plaintiff had remained in possession of one of the houses of the family, which had been treated by the father as continuing to be part of the joint property, the decision of 1861, based as to the immoveables on the absence of jurisdiction to declare a partition of them, caused this part of the claim to fall under the provisions of Act XIV. of 1859, s. 14. As to the immoveables, assuming that they could, on the question of limitation, be treated as distinct from the moveables, and that no payment had been made within twelve years before this suit by the ancestral banking firm to the plaintiff, the adjudication of 1861, whether in law correct or incorrect, had been that the elder son could not assert his rights in the moveables until his father's death. The defendant in this suit, who had taken the benefit of that judgment, could not now insist that it did not suspend the running of limitation on the ground that his brothers might have appealed from it if erroneous. So far, also, as the father's interest was concerned, the succession only opened on his death. Thirdly, it having been contended that as a father and his sons were during his life co-parceners in the family estate, one of such co-parceners being able, according to the decision of the Courts, by act *inter vivos*, to make an alienation of his undivided shares binding on the others, it followed that the father might dispose by will of his one-third share. *Held* that under the Mitakshara law, as received in Bombay, the father could not dispose of his one-third share by will. The doctrine of the alienability by a co-parcener of his undivided share, without the consent of his co-shares, should not be extended, in the above manner, beyond the decided cases. The Bombay Court had ruled that a co-parcener could not, without his co-shares' consent, either give or devise his share, and that the alienation must be for value. The Madras Court had ruled that although a co-parcener could alienate his share by gift, that right was itself founded on the right to partition, and died with the co-parcener, the title of other co-shares vesting in them by survivorship at the moment of his death. Without a decision as to which of these conflicting views, in regard to alienation by gift, was correct, the principles upon which the Madras Court had decided against the power of alienation by will were held to be sound and sufficient to support that decision.—*Lakshman Dada Naik v. Ramchandra Dada Naik*, I. L. R., 5 Bom. 48. [May 11, 1880.]

EXPL. 5 to s. 13 of the Code of Civil Procedure would not make a judgment obtained in a suit against one co-sharer binding on another co-sharer no party to such suit in respect of the rights enjoyed in common by such co-shares in their common property. Nor could such explanation be applied to a case instituted, or the judgment delivered in such case, during the time when the old Code of Civil Procedure was in force.—*Hazir Gazi v. Sonamonee Dassce*, I. L. R., 6 Cal. 31. [May 28, 1880.]

EXPL. 5 of s. 13 of Act X. of 1877 only applies to cases where several different persons claim an easement or other right under one common title, as, for instance, where the inhabitants of a village claim by custom a right of pasturage over the same tract of land or to take water from the same spring or well. Where, therefore, A, in defending a suit brought against him by B, to have it declared that he had a right to build a wall across a drain, set up a prescriptive right to use the drain, and it was decided that no such prescriptive right existed in A; and, subsequently, C brought a suit against B, claiming to use the same drain as an easement, and asking for the removal of the wall in question in the former suit, and B set up the judgment in the suit between himself and A as a bar to the suit, *held* that the right claimed by C not being one which he and other inhabitants of the neighbourhood claimed under one common title, but a prospective right which he claimed individually in respect of his own house and premises, and depending upon the length of time he had used the right, was a separate claim, and that the judgment in the suit between B and A did not operate as a bar to his suit.—*Kalishunkar Doss v. Gopal Chunder Dutt*, I. L. R., 6 Cal. 49; 6 C. L. R. 543. [May 31, 1880.]

ACT X. of 1877, s. 13, expl. 2, was meant to apply to a case where the defendant has a defence which, if he had so pleased, he might, and ought to, have brought forward; but, as he did not bring it forward, the suit has been decreed against him. Under such

circumstances the defendant is as much bound by the adverse decree as if he had set up the defence, and he is equally estopped from setting up that defence in any future suit under similar circumstances. The explanation was never intended to enable a party to treat a point of law as having been decided in his favour in a former suit, which was, in fact, not so decided, and which it was not necessary, for the purposes of the suit, to decide at all.—*Ghursobhit Ahir v. Ramdutt Singh*, I. L. R., 6 Cal. 923. [June 8, 1880.]

THE question whether the parties to a suit in a Court of Revenue for arrears of rent stand in the relation of landlord and tenant is one which it is necessary for such Court to try incidentally for the purpose of disposing of such suit, but not one which such Court has special jurisdiction to determine, and its determination of that question is not that of a competent Court. Consequently, where a Court of Revenue determines, in such a suit, that the parties do not stand in such relation, such determination does not bar the party alleging that the parties do stand in such relation from suing in the Civil Court to establish such relation.—*Gopal v. Uchabal*, I. L. R., 3 All. 51. [June 21, 1880.]

AN order refusing an application to execute a decree is not an adjudication within the rule of *res judicata*.—*Hurrooondary Dasse v. Jugobundhoo Dutt*, I. L. R., 6 Cal. 203. [June 28, 1880.]

HELD by the Full Bench that the law of *res judicata* does not apply in proceedings in execution of a decree. *Held*, therefore, by the referring Bench, where, on an application for the execution of a decree, the question was raised whether the decree awarded mesne-profits or not, and the Court executing it determined that it did not award mesne-profits, that such determination was not final, but such question was open to re-adjudication on a subsequent application for execution of the decree.—*Rup Kuari v. Ram Kirpal Shukul*, I. L. R., 3 All. 141. [Aug 10, 1880.]

S AND B jointly sued N for the redemption of a mortgage of an eight-anna share of a village, B suing as the purchaser from the mortgagor of a moiety of such share. N did not, in defence of such suit, assert a right of pre-emption in respect of such moiety, although such right had accrued to him on its sale by the mortgagor to B. S and B obtained a decree in such suit, and the mortgage was redeemed. N subsequently sued B and his vendor to enforce his right of pre-emption in respect of such moiety. *Held* that it was incumbent upon N in the former suit to have asserted in defence his right of pre-emption in respect of such moiety, inasmuch as, if that right had been established, it must, so far as B was concerned, have proved fatal to his title to redeem, and that, as he had not done so, the suit to enforce his right of pre-emption was barred by the provisions of s. 13 of Act X. of 1877, explan. ii.—*Narain Dat v. Bhairu Bukhshepal*, I. L. R., 3 All. 189. [Aug. 18, 1880.]

N BROUGHT a suit against P for enhancement of rent. P's defence was, *first*, that no notice of enhancement had been given; *secondly*, that the rent was not enhanceable, as he and his predecessors in title had held it at a fixed rent from the date of the Permanent Settlement. The suit was dismissed on the ground that no notice had been given; but the Munsif stated in his judgment that he considered the rent enhanceable, because he did not believe in the genuineness of the documentary evidence produced by P. The decree merely ordered that the suit should be dismissed, the portion of the judgment as to the enhanceability of the rent not being embodied in the decree. P, therefore, had no right of appeal against that portion of the judgment. In a subsequent suit by N against P for enhancement of rent of the same tenore, it was held that, on the rule laid down by the Privy Council in *Soorjeemonee Dayee v. Suddanund Mohapatrer*, and *Krishna Behari Roy v. Bunvari Lall Roy*, P was precluded, by the decision in the former suit, from denying that the rent of the tenore was enhanceable, although the decision on that point was not embodied in the decree. The material findings in each case should be embodied in the decree, and if they are not, it is incumbent on the parties, to avoid their being bound by decisions against which they have no right of appeal, to apply to amend the decree in accordance with the judgment.—*Niamut Khan v. Phadu Buldia*, I. L. R., 6 Cal. 219. [Sep. 14, 1880.]

A DECREE against a karnavan of a Malabar tarwad, as such, is binding upon the members of that tarwad, though not parties to the suit, in the absence of fraud or collusion. A karnavan is not a mere trustee, nor do the rules of Courts of Equity as to the necessity of making *cestui que* parties to suits against trustees by strangers apply to the case of a karnavan and the members of the tarwad. Expl. 5 of s. 13, Civil Procedure Code, is not limited to the case of a suit under s. 30. The members of a tarwad claim under a karnavan, suing as such, within the meaning of expl. 5 of s. 13. Status of karnavan discussed.—*Varanakot Narayanan Namburi v. Varanakot Narayanan Namburi*, I. L. R., 2 Mad. 328. [Sep. 30, 1880.]

PENDING the final hearing an appeal of a suit for confirmation of possession of certain land, and for the recovery of the produce of such land alleged to have been carried away by the defendants, the plaintiff brought a suit again, asking not only for confirmation of possession, but also for the recovery of the produce which had arisen since the institution of the other suit. *Held* that the second suit, so far as it sought for the recovery of the produce, was not barred by the first suit.—*Bissessur Singh v. Gunput Singh*, 8 C. L. R. 113. [Nov. 16, 1880.]

I, to whom the obligee of a bond for the payment of money in which immoveable property was hypothecated had assigned by sale her right thereunder, sued, by virtue of the deed of sale on such bond, for the money due thereunder, claiming to recover by the sale of the hypothecated property. The suit was dismissed on the ground that the deed of sale, not being registered, could not be received in evidence, and consequently I's right to sue on such bond failed. I, having procured the execution of a fresh deed of sale, and caused it to be registered, brought a second suit on such bond by virtue of such deed of sale, claiming as before. *Held* that the second suit was not barred by the provision of s. 13 of Act X. of 1877.—*Ishri Dat v. Har Narain Lal*, I. L. R., 3 All. 334. [Nov. 25, 1880.]

In 1864 the obligee of an instalment-bond, in which certain immoveable property was hypothecated as collateral security for the payment of the instalments, brought a suit upon such bond "against Z and A (the obligors) and the property hypothecated in the bond, defendants," claiming to recover instalments which were due and unpaid, and a declaration of his right to recover instalments which were not due as they fell due. He obtained a decree in such suit for "the amount claimed" against the "two defendants." It was also provided in such decree that, "until the satisfaction of the entire amount of the bond, the plaintiff can realise the amount of each instalment by executing this decree." The obligee applied in execution of such decree to recover, by the sale of such property, which had passed into the hands of third parties after the passing of such decree, instalments which had become due after the passing of such decree and had not been paid. Such execution having been refused on the ground that such decree was a money-decree, the obligee brought a second suit upon such bond to recover such instalments by the enforcement of the lien therein created on such property. *Held* that, although the enforcement of such lien was claimed in the former suit, yet, inasmuch as it was very questionable whether the Court was competent to grant the second relief claimed in that suit, viz., a declaration of right to recover instalments which were not due in execution of a decree for instalments which were due, and the claim in the second suit was not the same as that in the former suit, the plaintiff asking for instalments said to be actually due, and not for a declaratory decree for instalments not due, the second suit was not barred by s. 13 of Act X. of 1877.—*Umroa Lal v. Behari Singh*, I. L. R., 3 All. 297. [Nov. 29, 1880.]

R, on the 30th December 1870, obtained an *ex parte* decree against D, in execution of which he attached properties X and Y on the 4th January 1871. D applied for a rehearing, which was granted; and on the 30th of December 1871, a decree was again passed against D, in execution of which the same properties were attached on the 9th of August 1872, and purchased at the execution-sale on the 1st August 1874, by R. On the 14th February 1871, D had executed a *solohnāma* and mortgage in favour of G, pledging, among other properties, X and Y as security for a loan made to him by G. D having made default in payment, G obtained a decree against him in terms of the *solohnāma* on the 28th February 1871. Subsequently, D granted another mortgage of the same properties in favour of G. G sold his decree and mortgage to the plaintiff, who in execution of the decree attached properties X and Y. In these execution-proceedings R brought forward the fact of his purchase of the same properties in August 1874, and his claim was allowed, and the properties X and Y released from attachment on the 4th March 1876. The plaintiffs had, on the 8th March 1872, obtained a mortgage from D, on which they had obtained a decree on the 28th September 1874, in execution of which they had attached X and Y; but on R claiming them under his purchase in August 1874, an order was made on the 10th April 1876, releasing X and Y from attachment; and in a suit by the plaintiff to set aside that order, they failed as to properties X and Y, on the ground that those properties were not included in the mortgage of March 1872. In a subsequent suit brought by the plaintiffs against R and D, to set aside the order of the 4th March 1876, and to have X and Y declared liable to be sold under the decree of the 28th February 1871, *held* that the suit was not barred under s. 2 of Act VIII. of 1859 by the decree in the previous suit, nor was it barred by s. 7 of the same Act. *Held* also that the purchase by R in August 1874 was subject to the mortgage to G of the 14th February 1871.—*Radhanath Kundu v. Land Mortgage Bank of India, Limited*, I. L. R., 6 Cal. 559. [Dec. 22, 1880.]

WHERE the plaintiff in a suit prays that a person may be substituted on the record as the heir of a defendant who has died, the Judge should raise an issue as to whether the person sought to be substituted is the heir of the deceased defendant. In 1872, A brought a suit on a mortgage against the mortgagor, a Hindú widow, who died pending the suit. A then applied that the suit should be revived against B as the representative of the defendant. B denied that he was such representative, but the Judge refused to go into the question, made B a party, and gave A a decree for the sale of the mortgaged property. B subsequently brought a suit to have it declared, *inter alia*, that the mortgage and decree only covered the widow's life-interest. *Held* that the suit was not barred either as *res judicata* or under the provisions of s. 233 of the Code of Civil Procedure.—*Kanai Lal Khan v. Sashi Bhushon Biswas*, I. L. R., 6 Cal. 777. [Feb. 9, 1881.]

S CAUSED a notice of ejectment to be served upon K in respect of certain land, alleging that he held the same by virtue of a lease which had expired. K contested his liability to be ejected under s. 39, denying that he held the land by virtue of such lease, and alleging that he held it under a right of occupancy. The Revenue Court decided that K held the land under a right of occupancy, and not under such lease. S thereupon sued K in the Civil Court, claiming possession of land, on the allegation that K was a trespasser wrongfully retaining possession thereof after the expiration of his lease. *Held* that the suit was cognizable in the Civil Courts, and the decision of the Revenue Court did not render the matter in issue *res judicata*. The provisions of s. 13 of Act X. of 1877 do not apply to applications such as those under s. 39 of Act XVIII. of 1873.—*Sukhdaik Misr v. Karim Chandhri*, I. L. R., 3 All. 521. [Feb. 11, 1881.]

THE plaintiff sued to recover certain lands, claiming them as a portion of A, and alleging that A was portion of a mauza which had been leased to him in *patni* by the zamindár. The suit was dismissed, on the ground that, though A was known as a part of the plaintiff's mauza, yet it had been included in a *patni*-lease of an adjoining mauza, which the zamindárs had granted to the defendants previously to the date of the plaintiff's lease. The plaintiff brought a second suit claiming another portion of A on the same title. *Held* that the claim was barred as *res judicata*.—*Sundhya Mala v. Dabi Churn Dutt*, I. L. R., 6 Cal. 715. [Feb. 16, 1881.]

IN a suit for possession of a plot of land situate in B, the plot was claimed by the plaintiff as appertaining to mauza M, and by the defendant as appertaining to mauza S, and each party set up a *patta* from the same lessor, the zamindár, in proof of his title. It was held that while the land known as B appertained to mauza M, the *patta* of the defendant was prior in date to that of the plaintiff, and that the defendant therefore had the superior title. A second suit for another plot of land situate in B was subsequently instituted by the same plaintiff, and the same title put forward. *Held* that the matter in dispute was *res judicata* by the former suit.—*Sundhyamula v. Devi Churn Dutt*, 9 C. L. R. 216. [Feb. 16, 1881.]

A DECREE obtained *ex parte* is not final within the meaning of expl. 4, s. 13, of Act X. of 1877. Such a decree is not conclusive evidence of the amount of rent payable by the same defendant in another suit for subsequent rent of the same property. Where the plaintiff sued the defendant for a year's rent at the same rate which had been decreed to him for a previous year in a suit which he had brought against the same defendant for rent of the same property, and relied upon the former decree, which had been obtained *ex parte*, and which he also alleged had been duly executed, as evidence of the amount of rent due to him by the defendant, but it appeared that the lower Court had found that the alleged execution-proceedings were fraudulent, and that no steps had been taken which gave finality to the decree, *held* that the decree was not conclusive evidence of the amount of rent due from the defendant, or of the questions with which it dealt.—*Nil-money Singh v. Hiera Lal Dass*, I. L. R., 7 Cal. 23; 8 C. L. R. 257. [Mar. 14, 1881.]

IN a suit by raiyats against their zamindár, praying for measurement of certain land, and for a declaration of the amount of yearly rental, it appeared that, in a previous suit for rent by the zamindár against the raiyats, the raiyats had alleged that the amount of rent and the extent of land had been over-stated by the zamindár, but the Court decided that the raiyats were bound by a *jamabandi* signed by them, and refused to try whether the extent had been over-stated. *Held* that the present suit was not barred as *res judicata*.—*Roghhoonath Mundul v. Juggut Bundhoo Bose*, I. L. R., 7 Cal. 214. [April 7, 1881.]

WHERE one of several co-sharers, owners of a piece of land defined by metes and bounds forming part of a revenue-paying estate, brings a suit for partition, in which he does not seek to have his joint liability for the whole of the Government revenue annulled, such suit is cognizable by the Civil Courts, which have jurisdiction to determine the plaintiff's right to have his share divided, and to make a decree accordingly.—*Chundernath Nandi v. Har Narain Deb*, I. L. R., 7 Cal. 153. [April 13, 1881.]

IN a suit to recover possession of certain land, where it appeared that there had been a previous suit between the same parties with respect to the same land, in which the then plaintiffs sought to have their possession confirmed, and that in that suit the lower Courts had decided the case both on the question of title and possession, but on special appeal the High Court had dealt only with the question of possession, and, in dismissing the appeal, had not gone into the question of title, and the defendant in that suit subsequently sued to recover possession of the land, *held* that the question of title was still open between the parties, and had not been heard and finally decided by a Court of competent jurisdiction in a former suit within the meaning of s. 13 of Act X. of 1877 (Civil Procedure Code).—Gungabishen Bhugut v. Roghoonath Ojha, I. L. R., 7 Cal. 381. [April 28, 1881.]

THE jurisdiction of a Small Cause Court is not ousted in a suit for damages for rying away the produce of certain land when the defendant sets up title to the land in answer to the claim. S. 586 of the Code of Civil Procedure precludes a second appeal in a suit for damages under Rs. 500, although the suit has been instituted in the District Munsiff's Court and not in a Court of Small Causes, and although a question of title has been raised by the defendant and decided. *Per* Turner, C.J.—When a suit is brought in a form in which it is cognizable by a Small Cause Court under Act XI. of 1865, the Court cannot decline jurisdiction if it appears that incidentally a question of title is raised which it has not jurisdiction to determine for any other purpose than the decision of the suit before it. Under such circumstances the Court may, however, properly grant a reasonable adjournment that the question may be litigated and determined by the proper tribunal. *Per* Muttusāmi Ayyar, J.—The question, what is a suit of the nature cognizable in Courts of Small Causes within the meaning of s. 586 of the Civil Procedure Code, has reference to the mode of adjudication, and not to the *forum*: and the fact that the suit is instituted in the District Munsiff's Court, and not in a Court of summary jurisdiction, makes no difference for the purposes of that section. If the matter adjudicated on in a suit is only incidentally in issue or cognizable, the adjudication is final, whether by a Court of concurrent or limited jurisdiction, only for the purpose and object of that suit. *Per* Innes, J.—The decree of a Small Cause Court in a case where a question of title is raised incidentally is no bar to a suit upon the title under s. 13, expl. 2, of the Civil Procedure Code, because the Small Cause Court is not competent to pass a decree upon the title.—Mānappa Mudali v. McCarthy (S. T.), I. L. R., 3 Mad. 192. [April 29, 1881.]

G SOLD an estate nominally to the minor son of K, but in reality to K. K brought a suit in his minor son's name against N, the mortgagee of such estate, to redeem the same. N set up as a defence to such suit that such sale was invalid under Hindu law, as such estate was a share of certain undivided property of which he was a co-sharer, and had been made without his consent. It was finally decided in that suit that such estate was a share of such undivided property, and not the separate property of G, so that such sale was invalid, having been made without the consent of N, a co-sharer of such undivided property. G subsequently redeemed such estate, and, having done so, sold it a second time to K. N thereupon sued K to set aside such sale on the same ground as that on which he had defended the former suit. *Held* that the issue in such suit, whether such estate was a share of undivided property or the separate property of G, was *res judicata*, inasmuch as K, though not in name, yet in fact, was a "party" to the former suit in which such issue was raised and finally decided.—Khuh Chand v. Narain Singh, I. L. R., 3 All. 812. [May 18, 1881.]

THE obligee of a bond payable by instalments sued the obligor for four instalments, claiming with reference to the terms of such bond interest on such instalments from the date of such bond. The obligor contended in that suit that, on the proper construction of the bond, the interest on such instalments should be calculated from the dates of default. The obligee obtained a decree for interest as claimed. The obligee subsequently again sued the obligor for four instalments, again claiming interest of such instalments from the date of such bond. The obligee contended again in the second suit that interest should only be calculated from the dates of default. *Held* that the question as to the date from which interest due on the defaulting instalments was exigible under the terms of such bond was *res judicata*. It is the "matter in issue," not the "subject-matter" of the suit, that forms the essential test of *res judicata* in s. 13 of Act X. of 1877.—Pahlwan Singh v. Risal Singh, I. L. R., 4 All. 55. [June 30, 1881.]

B, who held a decree for money against I, caused certain property to be attached in execution of such decree as the property of his judgment-debtor. M, the wife of I, objected to such attachment, claiming such property as her own. Her objection was disallowed, and she consequently brought a suit against B to establish her right to such

property. She died while that suit was pending, leaving by will such property to her sons. That suit proceeded in the names of her sons, who claimed such property under such will. The lower Courts only decided in that suit that such property belonged to M, and not to I, and it was therefore not liable to be sold in execution of B's decree against the latter. They did not consider the question whether M's sons were entitled to such property under the mother's will. In second appeal in that suit B contended that I, as an heir to M, was entitled to a fourth share of such property, and such share was liable to be sold in execution of such decree. M's sons did not contend before the High Court that they were entitled to the whole of such property under their mother's will to the exclusion of I. The High Court allowed B's contention. B bought a fourth share of such property to sale in execution of his decree, and purchased it himself. Thereupon M's sons sued him for such share, claiming it under their mother's will. *Held* that their mother's will was a matter which should have been made a ground of defence by M's sons in the course of the trial of the second appeal in the former suit between them and B, and that, not having been so made, it was *res judicata* in the sense of s. 13, expl. 2, Act X. of 1877.—*Sultan Ahmed v. Maula Bakhsh*, I. L. R., 4 All. 21. [June 30, 1881.]

Not only may the plea of *res judicata*, though not taken in the memorandum of appeal, be entertained in second appeal, under the provisions of s. 542 of Act X. of 1877, but even when such plea has not been urged in either of the lower Courts, or in the memorandum of appeal, if raised in the second appeal, it must be considered and determined either upon the record as it stands, or after a remand for finding of fact.—*Muhammad Ismail v. Chatter Singh*, I. L. R., 4 All. 69. [July 11, 1881.]

H, THE proprietor of one-third share of a certain undivided estate, made a gift of such share to P. He subsequently, in February 1875, gave a mortgage of such share, in his capacity as P's guardian, to N and S, the two other co-sharers of such estate. In March 1878, P, having attained his age of majority, brought a suit, as a co-sharer of such estate, under such gift, against N and S for possession of certain land appertaining to such estate, on the ground that they were using such land as if they were the sole proprietors thereof. The lower Appellate Court, observing that such land was the property of the three co-sharers, that the mortgage of P's rights to N and S did not affect those rights as such, and that N and S were not justified in using such land as if they were the exclusive proprietors thereof, gave P a decree for possession of one-third share of such land. N and S appealed to the High Court on the ground that P should not have been awarded possession, as they were in possession of such land as mortgagees. The High Court remanded the case for the determination of the issue thus raised by N and S; and the lower Appellate Court found that N and S were in possession of P's share of such estate as mortgagees under the mortgage made by H above referred to, and of such land as such. P did not take any objection to this finding; and it was adopted by the High Court, and embodied in its final decree. In October 1879, P sued N for possession of his share in such estate, claiming under the gift from H, and alleging that the mortgage of such share by H to N was invalid. *Held* that, inasmuch as such mortgage was matter substantially in issue in the former suit, the matter in issue in the second suit was *res judicata* under expls. 1 and 2, s. 13 of Act X. of 1877.—*Nirman Singh v. Phulman Singh*, I. L. R., 4 All. 65. [July 11, 1881.]

A HINDU sued for compensation for the loss of his daughter's service in consequence of her abduction by the defendant, and for the costs incurred by him in prosecuting the defendant criminally for such abduction. The defendant was convicted on such prosecution. *Held* that the decision of the Criminal Court did not operate under s. 13 of Act X. of 1877 to bar the determination in such suit of the question whether the defendant had or had not abducted the plaintiff's daughter. Also that the plaintiff was entitled to recover the costs of such criminal proceedings. The daughter in this case was a married woman who had been deserted by her husband, and at the time of her abduction was living with the plaintiff, her father. *Held* by Stuart, C.J.—That the suit by the father for compensation for the loss of his daughter's services in consequence of her abduction was, under the circumstances, maintainable. *Held* by Oldfield, J.—That a suit by a Hindu father for the loss of his daughter's services in consequence of her abduction is not maintainable.—*Ram Lal v. Tula Ram*, I. L. R., 4 All. 97. [Aug. 15, 1881.]

IN order to see whether a question is *res judicata* within the meaning of s. 13, Civil Procedure Code, the former decree and the questions decided thereby must alone be considered. The words in s. 13, "has been heard and finally decided by such Court," do not apply to an opinion expressed in the judgment on other issues not material for the purpose of the decree, though properly determined under s. 204 by the Court of first instance. *Niamut Khan v. Phadu Beldia* (I. L. R., 6 Cal. 319) and *Lachman Singh v. Mohan* (I. L. R., 2 All. 497) dissented from. Where a plaintiff improperly brings a defendant before a Court,

and his suit is dismissed, the defendant should not be deprived of costs, merely because the Court considers the defence a fabrication to meet the plaintiff's claim.—*Devarakonda Narasamma v. Devarakonda Kánaya*, I. L. R., 4 Mad. 184. [Sep. 5, 1881.]

THE decision by a competent Court, that an application for the execution of a decree is barred by limitation, has the effect of *res judicata*; and although such decision may be erroneous, yet, so long as it remains unreversed in appeal, it is valid and binding, and the question cannot be re-opened. A decision, that an application for execution is not time-barred, has a similar effect. On the 15th April 1868, the plaintiff applied for the execution of a decree held by him against the defendant, and certain houses were thereupon attached. In April 1869, the attachment was raised on the intervention of a third person. The plaintiff then brought a suit to establish his right to attach the houses, and obtained a decree on the 28th February 1871. An appeal was made, and the suit was finally decided in the plaintiff's favour in April 1873. After the plaintiff had obtained his original decree, and while the appeal was pending, he applied for the sale of the houses in execution on the 30th November 1871, and subsequently made three other applications within three years of each other, the last of which was dated the 30th October 1876. The Court rejected this application on the 28th November 1876, on the ground that the execution of the decree was barred, as more than three years had elapsed between the first and second applications (i.e., the applications of the 15th April 1868, and 30th November 1871). The plaintiff appealed against the order; but his appeal was rejected, because he had failed to produce with it a copy of the order appealed against. The plaintiff took no further steps in that proceeding, but made a fresh application for execution on the 10th August 1878. The Subordinate Judge rejected it, on the ground that the execution was barred, the matter being *res judicata*. In appeal, the District Judge reversed that order, and allowed execution. On appeal to the High Court, held on the authority of *Mungul Pershad Ditchit v. Grija Kunt Lahiri Chowdry* (L. R. 8 Ind. Ap. 123) that the rules of *res judicata* applied, and that the application of the 30th November 1871 was time-barred, and, *a fortiori*, every subsequent application was barred. *Semble*.—A proceeding in execution is a proceeding which terminates in a decree as defined by s. 244 of the Civil Procedure Code (Act X. of 1877), and is, therefore, a suit within the meaning of the Code.—*Manjunath Badrábhat v. Venkatesh Govind Shánbhug*, I. L. R., 6 Bom. 54. [Sep. 26, 1881.]

WHEN the judgment of a Court of first instance upon a particular issue is appealed against, that judgment ceases to be *res judicata*, and becomes *res sub-judice*; and if the Appellate Court declines to decide that issue, and disposes of the case on other grounds, the judgment of the first Court upon that issue is no more a bar to a future suit than it would be if that judgment had been reversed by the Court of appeal.—*Nilvaru v. Nilvaru*, I. L. R., 6 Bom. 110. [Nov. 15, 1881.]

IN December 1878, H, a Hindu widow, in possession, by way of maintenance, of a certain estate, of which R owned one-third, and P, B, and S, one-third jointly, made a gift thereof to N. H died in January 1879. In February 1879, R and P, B and S, joined in suing N for a declaration of their proprietary right to two-thirds of the estate, and to have the deed of gift set aside. The Court trying this suit treated it as one for a mere declaration of right, and dismissed it, with reference to the provisions of s. 42 of the Specific Relief Act, 1877, on the ground that the plaintiffs had omitted to sue for possession, although they were not in possession, and were able to sue for it. In November 1879, R and P, B and S, again joined in suing N. In this suit they claimed possession of two-thirds of the estate, and to have the deed of gift set aside. Held by the Full Bench (reversing the judgment of Pearson, J., and affirming that of Oldfield, J.) that the decision in the first suit was no bar to the determination in the second suit of the question as to the validity of the deed of gift. *Per* Stuart, C.J., and Straight and Oldfield, JJ., that the causes of action in the two suits being different, the second suit was not barred by the provisions of s. 43 of the Civil Procedure Code. *Per* Tyrrell, J., that the plaintiffs being entitled to only one remedy in the former suit, the provisions of s. 43 were not applicable to the second suit. Held by the Full Bench that there was no misjoinder of plaintiffs in the second suit. S. A. No. 1050 of 1879 (decided the 12th May 1880, not reported), distinguished.—*Ram Sewak Singh v. Nakohed Singh*, I. L. R., 4 All. 261. [Jan. 16, 1882.]

A KARNAVAN of a Malabar tarwad, having a right at any time to demand restoration of the property of the tarwad in the hands of the anandravan, is not debarred by s. 13 or s. 43 from bringing a second suit to recover lands in the wrongful possession of an anandravan, either by the fact that in a former suit between the same parties the karnavan only laid claim to some of the lands sued for, or by the fact that the former suit was dismissed upon the joint petition of the parties, alleging a compromise

and a surrender of the lands, which, as a fact, were not surrendered, but wrongfully retained by the anandavan. An anandavan has no right to the value of improvements effected by him on awarded property upon surrender to the karnavan when such improvements were made with private funds.—*Uramkumārath Kannan Nāyar v. Uramkumārath Tenju Nāyar*, I. L. R., 5 Mad. 1. [Jan. 23, 1882.]

IN 1874 V sued P to recover certain lands held by him under a rental agreement dated 1873. S was made a defendant on the ground that he held one plot as under-tenant to P. S claimed to hold under N. As to this plot, the issue raised was whether the land was held by S under P; the decision, that S did not hold under P, but under N, since 1828; the decree, that V's suit be dismissed as to this plot. *Held*, in a suit brought in 1881 by V against N and S to recover the same plot of land, that the suit was not barred by reason of the previous decision in 1874.—*Ananda Rāman Vāthiār v. Paliyil Vittil Nāun Nāyar*, I. L. R., 5 Mad. 9. [Feb. 6, 1882.]

A SUED B for rent in the Court of the Deputy Collector of Tipperah under the provisions of Act X. of 1859. C intervened, claiming that the land in respect of which the rent was claimed was his property, and the suit was dismissed. On appeal, the District Judge of Tipperah reversed this decision and decreed the claim, on the ground that C had no right whatever to the land. In a subsequent suit brought by C against A and B for possession of the same land, *held* that the previous decree of the District Judge did not constitute the plaintiff's claim a *res judicata*, and was no bar to the suit. *Dinanath Bose v. Kali Kumar Roy* [B. L. R., Sup. Vol. 364; 5 W. R. (Act X. Rul.) 23] followed.—*Mahomed Afsuruddin v. Beer Chunder Manikya*, I. L. R., 8 Cal. 470. [Feb. 21, 1882.]

THE erroneous decision by a competent tribunal of a question of law directly or substantially in issue between the parties to a suit does not prevent a Court from deciding the same question, arising between the same parties in a subsequent suit, according to law. Persons of whatever sect are at liberty to erect a building, and therein conduct public worship on their own land, provided they neither invade the right of property enjoyed by their neighbours, nor cause a public nuisance; and are also entitled to conduct religious processions through public streets, so that they do not interfere with the ordinary use of such streets by the public, and subject to such directions as the Magistrate may lawfully give to prevent obstruction of the thoroughfare or breaches of the public peace. In a suit in 1850 between the Tenkalais and Vadakalais, rival religious sects, represented by the plaintiffs and defendants respectively, the Vadakalais having endeavoured to open a temple for public worship in a certain public street, were, by the decree of the Sadr Court, prohibited from erecting a temple or instituting public worship on the spot of ground objected to by the Tenkalais, and which lay within the range of the Tenkalais temple, *i. e.*, within the usual range of the processions conducted in connection with the temple worship. In 1879 the Vadakalais opened a temple for public worship on another site, their private property, in the same street. *Held* that a decree of the Sadr Court in the former suit was no bar to the action of the Vadakalais.—*Parthasārathi v. Chinnakrishna*, I. L. R., 5 Mad. 304. [May 1, 1882.]

IN 1870 the plaintiffs sued to redeem a mortgage of certain lands from the defendants' predecessors in title. The suit was dismissed on the ground that the plaintiffs' equity of redemption had been sold in execution of a decree to A B. The plaintiffs, having re-purchased the equity of redemption from A B, brought a second suit to redeem the lands in the defendants' possession. *Held* that the question whether the equity of redemption of the lands in suit had been sold to A B was *res judicata*, and could not be reopened by the defendants on the ground that the plaintiffs were litigating under a different title in the former suit. The admissions of a person whose position in relation to property in suit it is necessary for one party to prove against another are in the nature of original evidence and not hearsay, though such person is alive, and has not been cited as witness.—*Ali Moidin v. Kombi*, I. L. R., 5 Mad. 239. [May 3, 1882.]

A LEASED lands to B, who sued C for possession of a certain mauza, alleging it to be a portion of the lands leased. A was made a defendant, and supported the case of the plaintiff, who obtained a decree. C appealed, making A and B respondents, when the decree was reversed, and the suit dismissed, on the ground that the mauza sued for was the property of C; and that ruling was upheld on special appeal to the High Court. Subsequently A brought a suit against C for the same mauza, making B a defendant. *Held* that the title to the mauza was *res judicata* between A and C, and that the suit would not lie. *Govind Chunder Koondoo v. Turuck Chunder Bose* (I. L. R., 8 Cal. 140) followed.—*Bissurup Gossamy v. Gorachand Gossamy*, I. L. R., 9 Cal. 120. [May 3, 1882.]

AN adoption having been held to be valid by the High Court on appeal from a Subordinate Court, an appeal to the Privy Council was preferred, when the parties entered into a compromise, and the appeal was permitted to be withdrawn. *Held* that the decree of the High Court as to the validity of the adoption became final, and was not affected by the compromise so as to allow the matter to be again litigated between the parties or their privies. Although the decision of a Court as to the validity of an adoption in a suit between A and B may, in any subsequent proceedings between A and those claiming under him on the one side, and B and those claiming under him on the other, estop the parties to such proceedings from again questioning the validity of the adoption, yet in a suit where both the contesting parties claim under B, such decision will not operate as an estoppel so as to prevent the validity of the adoption being again questioned by either party to such suit.—*Vythilinga v. Vijayathammil*, I. L. R., 6 Mad. 48. [May 9, 1881.]

THE decision of a Court, in order to be conclusive in another Court, must have been that of a Court which would have had jurisdiction to decide the question raised in the subsequent suit in which the decision is given in evidence as conclusive. The words, "Court of competent jurisdiction," used in s. 13 of the Code of Civil Procedure, include the meaning that the first Court must not have been precluded by the pecuniary limits of its jurisdiction from deciding the question raised in the other. The two Courts must exercise such concurrent jurisdiction in regard to the pecuniary limit of their powers that the subject-matter of the second suit would not have been beyond the powers of the Court which disposed of the prior one. The defence made to a suit on a bond for Rs. 12,000 and interest thereon, in a Court having no pecuniary limit of jurisdiction, was that in a prior suit for Rs. 1,000, balance of interest, brought in a Court with power to try suits not exceeding Rs. 5,000 in value, the principal sum due on that bond had been decided to be Rs. 4,790. *Held* that the issue as to the amount of principal due on the bond has not been heard and finally decided by a Court of competent jurisdiction within the meaning of s. 13.—*Misir Ragho Bardial v. Sheo Baksh Singh*, I. L. R., 9 Cal. 439. [July 15, 1882.]

CERTAIN immoveable property was mortgaged to R, and then sold to N. It was then brought to sale in execution of a decree against N, and was purchased by H. The balance of the sale-proceeds, after satisfaction of that decree, was paid to N. Under the terms of the mortgage to R, interest on the principal amount was payable annually, and its payment was charged on the property as well as the payment of the principal amount. The mortgagors having failed to pay the interest annually, R in 1875 sued them and N and H to recover the interest due. It was decided in that suit that N was primarily and personally liable for the interest then due on the mortgage, as he had received the sale-proceeds of the property, and that the property was only liable in case he failed to satisfy the claim. N subsequently paid into Court the sale-proceeds he had received, and R was paid the same. In 1878 R again sued the same persons for interest, and again N was declared primarily and personally liable, on the ground that he had not at once made over the sale-proceeds to R. In 1890 R sued the same persons to recover the principal amount and interest due on the mortgage by the sale of the mortgaged property. *Held* that, whatever might have been the rights and relations of the parties, so long as any portion of the sale-proceeds remained with N, their position towards him assumed an entirely different character when once he had discharged himself of those moneys, and with this change in the situation the "*ratio decidendi*" of the suits of 1875 and 1878 no longer existed, and, therefore, the decisions in those suits did not preclude R from bringing a suit to recover the principal and interest due on his mortgage from the mortgaged property.—*Ratan Rai v. Hanuman Das*, I. L. R., 5 All. 118. [Aug. 1, 1882.]

S. 13 is not exhaustive as to the effect of *res judicata*. It does not deal with the case of judgments *in rem*, nor with that of parties represented by, though not claiming under, the parties to a former suit.—*Ahmedbhoy Hubibhoy v. Vulleebhoy Cassumbhoy*, I. L. R., 6 Bom. 572, 703. [Sep. 30, 1882.]

THE plaintiff, a member of a Malabar Nambúdi family, sued for certain land, claiming it as the property of his family, the *Vadasheri* illam. He had been dispossessed by the defendants, under a decree declaring their title to the land against the plaintiff's elder brother, who claimed it on behalf of the *Vadasheri* illam. *Held* that the plaintiff was not estopped by the former decree from recovering the land. *Per Innes, J.*—The question whether a decree obtained against the karnavan of a Nayar tarwad or of a Nambúdi illam in Malabar is binding on the family is purely one of procedure. The *dictum* in *Varanakot Náráyanan Nambúri v. Varanakot Náráyanan Nambúri* (I. L. R., 2 Mad. 328), that in the absence of fraud or collusion a decree against the karnavan, as such, is binding on the amandravans of the tarwad, is not warranted by any provision of the Code of Civil Procedure. Every member of the tarwad is entitled to be made a party, or to have

notice under s. 30 of the Code of Civil Procedure, in any suit, the object of which is to affect the tarwad property. Expl. 5 of s. 13 of the Code of Civil Procedure does not refer to *bond fide* defences, but to *bond fide* claims, and does not make a decree binding on a person not a party to it, where the actual defendant was jointly interested with such person in the subject-matter of the suit, and defended the suit *bond fide*. *Hasir Ghazi v. Sonamonee Dasee* (I. L. R., 6 Cal. 31) approved.—*Vásudáva v. Náráyana*, I. L. R., 6 Mad. 121. [Oct. 13, 1882.]

IN 1866 S obtained a decree authorising him to recover certain property on payment of a certain sum to the mortgagee, but not declaring that S would be foreclosed if he did not exercise his right of redemption. *Held* that S was not debarred from bringing a suit to redeem the same property in 1881.—*Sámi v. Somasundram*, I. L. R., 6 Mad. 119. [Nov. 15, 1882.]

A HINDU widow and her son, the then presumptive heir to property claimed by the widow, obtained a decree against a more remote reversionary heir. The son predeceased his mother, and the person against whom the decree had been obtained became the next reversionary heir. *Held*, in a suit for possession by him, that the decree in the previous suit did not operate as *res judicata*.—*Ram Chunder Poddar v. Hari Das Sen*, I. L. R., 9 Cal. 463. [Nov. 30, 1882.]

IN 1870 two plots of land, numbered 155 and 147, belonging to the same owner, were sold in execution of a decree. The purchaser of plot 155 sold it to A, who in 1877 sued the tenant of a portion of the land for rent. In this suit A prayed that it might be declared that he was the owner. The tenant alleged that B, the purchaser of plot 147, was the owner of the land in respect of which rent was sought to be recovered, and B was made a party to the suit. At the hearing A did not appear, and the suit was dismissed for default. Subsequently A sold plot 155 to the present plaintiff, who now sued for possession. *Held* that the suit was not barred as *res judicata*.—*Gobind Chunder Addya v. Afzal Rabbani*, I. L. R., 9 Cal. 426. [Dec. 5, 1882.]

AN occupancy-tenant, who had been ejected under ss. 34 and 93 (B) of the North-Western Provinces Rent Act, on the ground that he had committed an act mentioned in those sections which rendered him liable to ejectment, sued in the Civil Court for a declaration of his right of occupancy and to have the decree of the Revenue Court directing his ejectment declared of no effect, on the ground that his act was not one of those rendering him liable to ejectment, being authorised by local custom. *Held* that the question of the plaintiff's liability to ejectment on account of the act in question, being a matter the cognizance of which was limited to the Revenue Courts, and the decision of the Revenue Court against him having become final, the plaintiff's suit was barred by s. 13 of the Civil Procedure Code. *Raj Bahadur v. Birmha Singh* (I. L. R., 3 All. 85) distinguished.—*Radha Prasad Singh v. Salik Rai*, I. L. R., 5 All. 245. [Jan. 3, 1883.]

THE three defendants, G, R, and K, and their brother M, the grandfather of the plaintiff, were members of one family, possessing undivided ancestral property consisting of the villages of B, P, and S, the two former being situated in the Poona Zilla, and the latter in the Sátára Zilla. In 1866, the three defendants (each in a separate suit) sued M in the Poona Courts for partition of the villages of B and P. They in their plaints alluded to the village of S, stating that it was their own, and not subject to partition. M in his answer contented himself with denying the right to partition of the villages of B and P, and made no claim, in the alternative, to a share in the ownership of S. The plaintiff, the grandson of M, now sued the defendants in the Sátára Courts for partition of the village of S, contending that he was not precluded from so doing by the former proceedings in the Poona Courts. *Held* that the plaintiff's claim was *res judicata*, and that his suit was concluded under the provisions of the Civil Procedure Code (Act X. of 1877), s. 13, expl. 1 and 2. A member of an undivided family, suing his co-parceners for partition of family-property, is bound to bring into hotchpot any undivided property in his own possession, in order that there may be a complete and final partition, and cannot claim to withhold any such property on the ground that it is situated within another jurisdiction. That being so, the plaintiff's grandfather, M, having neglected in the previous suit to make the exception of the village of S a ground of defence, the judgment which followed involved the decision of every claim of title upon the cause of action, and must be taken between the parties as amounting to a positive adjudication of all such claims, including the claim to the village of S. No doubt, the rule that every partition-suit shall embrace all the joint family property has been held to be subject to certain qualifications, as, for instance, where different portions of it lie in different jurisdictions, or where a portion is not available for actual partition as being in the possession of a mortgagee; but there is no authority for the proposition that a member, who sues for partition of property in the hands of the defendants, can refuse to bring into hotchpot

any undivided property held by himself, on the ground that it is situated within another jurisdiction. *Subbá Rau v. Ráma Rau* (3 Mad. H. C. R. 376) referred to and distinguished.—*Hari Náráyan Brahme v. Ganpatráv Dáji*, I. L. R., 7 Bom. 272. [Mar. 8, 1883.]

AN allowance for the maintenance of a younger member of a family was charged upon the inheritance to which the eldest male member alone succeeded. In a suit for such an allowance brought by a younger brother against the elder, who had succeeded their deceased father in the possession of the estate, held that an order made dismissing a claim for maintenance preferred by such younger brother against their father in his lifetime, founded on an *ekvárndma*, did not afford a defence under s. 13 of the Code of Civil Procedure. Held also that the brothers having made an agreement, fixing the allowance for maintenance at a certain sum, the younger brother agreeing to receive a less sum for a defined period, he could only obtain a decree for the allowance so reduced.—*Ahmad Hossein Khan v. Nihal-ud-din Khan*, I. L. R., 9 Cal. 945. [Mar. 16, 1883.]

N SUED W for a moiety of a brick-kiln, claiming by right of inheritance, and alleging in respect of the other moiety that it was his own property. W, in her defence to the suit, denied that N had any right in the kiln, and that a moiety of the kiln belonged to him. An issue was framed on the point whether a moiety of the kiln belonged to W, which the Court of first instance decided in N's favour. N eventually obtained a decree for a moiety of the kiln which he claimed by right of inheritance. W appealed, contending, *inter alia*, that it was not proved that a moiety of the kiln belonged to N. The appeal was decreed, and the decree of the Court of first instance in N's favour was set aside. W subsequently sued N for the value of bricks which he had wrongfully taken from the kiln. N set up as a defence to the suit that a moiety of the kiln belonged to him. Held that the issue whether a moiety of the kiln belonged to N was *res judicata* under s. 13, expl. 1 of the Civil Procedure Code.—*Wilait Begam v. Nur Khan*, I. L. R., 5 All. 514. [April 13, 1883.]

WHERE there has been a suit between an agriculturist mortgagor and his mortgagee for an account merely, a subsequent suit for possession on payment of the money declared to be due is barred under either s. 13 or s. 43 of the Code of Civil Procedure.—*Bháu Báráji v. Hari Náikantaráv*, I. L. R., 7 Bom. 377. [April 17, 1883.]

K, the purchaser of certain immoveable property in execution of a decree, sued for possession of the same. The suit was dismissed "in the form in which it was brought," because the plaintiff had not filed with the plaint the sale-certificate. K subsequently brought a fresh suit. Held that the dismissal of the former suit "in the form it was brought" did not amount to permission to sue again contemplated by s. 373 of the Civil Procedure Code, and such dismissal must be regarded as a "decision" thereof in the sense of s. 13, expl. 3, and therefore as a bar to the fresh suit.—*Ganesh Bai v. Kalka Prasad*, I. L. R., 5 All. 595. [May 12, 1883.]

THE plaintiff, mortgagee in possession of certain property, applied for the removal of an attachment placed on it by the defendant in execution of a decree against a third party. In default of payment of court-fees by the defendant the attachment was removed, but, in ignorance of this fact, the plaintiff's application was proceeded with, and ultimately rejected. The plaintiff then brought a suit for a declaration of his right, but it was dismissed, on the ground that the attachment has already been removed. Subsequently the defendant placed a second attachment on the property, which the plaintiff again applied to remove. The defendant contended that the plaintiff's application was barred by the proceeding on the first attachment. Held that the decision on the plaintiff's first application having no object existing on which to operate, the attachment having then been removed, it could not properly be regarded as *res judicata* at all, since no one was seriously interested in having it decided in a different way; and that, supposing submission to that decision on the part of the plaintiff for a certain time could have given it a final effect, there had, as a matter of fact, been no such submission, the plaintiff having done all that was incumbent on him to get the summary inquiry and orders replaced by a formal trial and judgment; and that there was nothing, therefore, in these proceedings disentitling the defendant to oppose the second attachment. Held also that the second attachment, after the first has been removed, was a new and distinct act, giving rise to a new cause of action, or complaint, to the plaintiff, to which, in any case, he was entitled to a fresh inquiry and decision.—*Káshinath Morsheth v. Rámchandra Gopináth*, I. L. R., 7 Bom. 408. [June 29, 1883.]

PLAINTIFF sued for a declaration that certain lands were his, and for possession of them. Defendant No. 1 claimed the ownership of the lands; defendant No. 2 claimed to be mortgagee in possession. The decree simply dismissed the suit; but the lower Court found, as a fact, that the ownership of the lands was in the plaintiff, although the

plaintiff was not entitled to possession of them by reason of the mortgage to defendant No. 2. Defendant No. 1 now appealed on the ground that, although the decree itself was entirely in her favour, she would be prejudiced in any future proceedings if the finding of fact, as to the ownership of the lands, were left unchallenged. *Held* that the appeal would not lie; for the decree is what must be looked to to see what was conclusively decided, and there was nothing in the decree actually passed which the plaintiff could afterwards use as *res judicata* in his favour; and an appeal is not admissible on any point not having the authority of *res judicata*. An adjudication is only conclusive evidence of the facts established therein or properly tending thereto; hence from a simple judgment against him a party cannot reduce anything in his favour as *res judicata*, for nothing in his favour can have been an essential element of an adverse decree.—*Anusuyábbál v. Sakhárám Pándurang*, I. L. R., 7 Bom. 464. [July 27, 1883.]

IN 1856, V, a member of an undivided Hindu family, sued the defendants, and obtained a decree for the redemption of certain immoveable property, but the decree was never executed. At the date of that suit, V was the manager of the family, consisting of himself and the plaintiff N, who was then a minor. The decree did not provide for the foreclosure of the mortgage in the event of V failing to redeem. In 1878, N brought another suit to redeem the same property. The lower Court held that as the former decree did not direct foreclosure, the relation of mortgagor and mortgagee continued between the parties, and that the plaintiff's suit was not barred by the former decree. The defendants appealed. *Held* (Pinhey, J., *dissentiente*), reversing the decree of the lower Court, that the plaintiff's suit was barred. A decree for redemption on the default of the decree-holder to pay the money declared to be due within the time fixed by the decree, or, if none be fixed, within the time allowed by the law for the execution of the decree, operates as a judgment of foreclosure, and debars the mortgagor from afterwards bringing a second suit to redeem the same property. A Hindu family is regarded as a corporation whose interests are necessarily centred in the manager, the presumption being that the manager is acting for the family, unless the contrary is shown. Before the introduction of the Civil Procedure Code this was so equally with regard to litigation as to other transactions, and it was not obligatory, or even customary, for a Hindu manager to set forth that he sued in a representative character (as now required by the Code, s. 50), or to add the co-owners as parties to the suit (as required by English law). V's suit, therefore, being brought in 1856, and no fraud or collusion being alleged, bound the present plaintiff, though then a minor, and he could not now bring a second suit on the same cause of action.—*Gan Sávant Bal Sávant v. Náráyan Dhond Sávant*, I. L. R., 7 Bom. 467. [Aug. 6, 1883.]

A DECISION of a Revenue Court disallowing an application to eject a tenant, because he has built on his land, does not, under s. 13 of the Civil Procedure Code, bar a suit in the Civil Court to have the building demolished.—*Amrit Lal v. Balbir*, I. L. R., 6 All. 68. [Aug. 21, 1883.]

A LANDLORD, having tendered a pattá at a certain rate, sued his tenants in the Court of the District Munsif to recover rent for Fasli 1289 (1879-80). The tenants pleaded that they were not bound to accept the pattá tendered by virtue of an implied contract, which entitled them, without exchange of pattá and muchalka, to hold the land permanently at a lighter rent. The District Munsif and, on appeal, the District Court decided that no implied contract had been proved by the tenants. The suit was dismissed on the ground that the pattá tendered was not one which the tenants were bound to accept under Act VIII. of 1865 (Madras). The landlord then sued in the Revenue Court to compel the tenants to accept a pattá for Fasli 1291 (1881-82), and the tenants again put forward the same plea. *Held* that the question whether the tenants were entitled to hold permanently at a lighter rate without exchange of pattá and muchalka was not *res judicata* by virtue of the decree in the former suit.—*Muttukumarappa v. Arumuga*, I. L. R., 7 Mad. 145. [Aug. 27, 1883.]

A COURT having jurisdiction decided in the course of execution-proceedings (in an order which was not appealed) that the decree to be executed awarded mesne-profits according to its true construction. *Held* that this decision had become final between the parties, not under s. 13 of Act X. of 1877, but upon general principles of law, as an interlocutory order in the suit. The order construing the decree having been made in the same suit in which the application was made, the question whether the law of "*res judicata*" applied was not relevant, that term referring to a matter decided in another suit.—*Ram Kirpal v. Rup Kuari*, I. L. R., 6 All. 269. [Dec. 1, 1883.]

A SUBORDINATE Judge, to whom an appeal is transferred under the Bengal Civil Courts Act (VI. of 1871), has not the power to dispose of it in the manner provided by ss. 206, 207, and 208 of the N. W. P. Rent Act, 1881: the District Judge alone has the

power to dispose of appeals in that manner. *Ram Prasad v. Rai Kishen* (I. L. R., 6 All. 36) followed. The plaintiffs, who claimed to be tenants of certain land under a lease from the zamindár, alleging that the defendant was their sub-tenant, under s. 36 of the N. W. P. Rent Act, 1881, caused a notice of ejectment to be served upon the latter under the provisions of that Act. The defendant did not make an application under that Act contesting his liability to be ejected, and the plaintiffs applied under ss. 40 and 95 (f) of that Act for assistance to eject him. The Revenue Court trying this application rejected it on the ground that the defendant was not a sub-tenant of the plaintiffs, but a co-sharer in their tenancy. The plaintiffs thereupon sued the defendant in the Civil Court for a declaration that the latter was not a partner with them in the lease, and for possession of the land by his ejectment therefrom. Held that the relief sought in the suit by the plaintiffs was not one which a Revenue Court could give under any of the clauses of s. 95 of the Rent Act, which presupposes an admitted relation of landholder and tenant; and therefore the determination by the Revenue Court of the plaintiff's application for ejectment of the defendant was not the decision of a Court competent to try the suit, and was no bar to its maintenance in a Civil Court, within the principle of s. 13 of the Civil Procedure Code. —*Lodhi Singh v. Ishri Singh*, I. L. R., 6 All. 295. [April 21, 1884.]

L was the owner of a four-anna share in a village. On the 1st March 1880, his childless widow, R, and his nephew, B, who has separated from his two brothers, and lived for some years with both L and R, sold to S one-third of the four-anna share. The brothers of B sued the vendors and the vendee to enforce a right of pre-emption, alleging that they, as well as B, had acquired and entered into exclusive possession of the estate of L as his heirs. In the second appeal in this suit the High Court held that, as it was proved that the four-anna share was L's separate estate, and R had succeeded to it, and was in possession of it, and thus the plaintiffs had not established a title to, or acquired possession of, any part of the share, the plaintiffs were not in a position to assert a preferential claim to purchase the property in dispute. The plaintiffs also pleaded that the question of the right and title asserted by them as the actual heirs of L should have been tried and determined in the suit; but the High Court rejected this plea on the ground that the suit had been based merely on the allegation of *de facto* possession, and that their claim was to obtain by purchase one-third share only, and not for any remedy in respect of their right to possession by inheritance of the entire four-anna estate. Subsequently to this decision, the same plaintiffs, alleging equal rights with B as reversionary heirs of L, sued the same defendants for a declaration of the incompetence of R, the widow, to alienate the property, and that the sale-deed might be declared, as against them, null and of no effect. The cause of action was stated to be the execution, on the 1st March 1880, of the deed of sale. Held that the plea of *res judicata* failed. The matter now substantially in issue between the parties, viz., the presumptive title of the plaintiffs to possession of the property, had not been "heard and finally decided" in the sense of s. 13 of the Civil Procedure Code. Such title was not "alleged and denied" by the parties in that suit, within expl. 1, s. 13. It was not matter which "might and ought" to have been made the ground of attack in the former suit, within expl. 2. The law does not require a plaintiff at once to assert all his titles to property, or to be thereafter estopped from advancing them. A plaintiff may, with the leave of the Court (s. 44, Civil Procedure Code), join causes of action; but he is nowhere compelled to do so. The cause of action in the second suit, although the date of its accrual was the same, was separate and distinct from the cause of action asserted in the previous suit.—*Sheo Ratan Singh v. Sheosahai Misr*, I. L. R., 6 All. 358. [May 1, 1884.]

So long as the benami system is recognised in this country, it is to be presumed, in the absence of any evidence to the contrary, that a suit instituted by a benamidár has been instituted with the full authority of the beneficial owner, and any decision made in such suit will be as much binding upon the real owner as if the suit had been brought by the real owner himself. *Meheroonissa Bibee v. Hur Churn Bose* (10 W. R. 220); *Kalleo Prosunno Bose v. Dino Nath Bose Mullick* (19 W. R. 434), and *Sita Nath Shah v. Nobin Chunder Roy* (5 C. L. R. 102), discussed. In a suit for malikana the issue between the parties substantially raises the question of the proprietary right to the estate in respect of which the malikana is claimed; and when the question of the proprietary right has been decided in a previous suit between the same parties a subsequent suit for malikana will be barred as *res judicata*. In s. 13 of Act XIV. of 1882 the words "in a Court of jurisdiction competent to try such subsequent suit" refer to the jurisdiction of the Court at the time the first suit is brought. Thus, when the first suit is within the jurisdiction of a Munsif, and the subsequent suit, by reason of an increase in value of the property, is beyond his jurisdiction, such subsequent suit would nevertheless be barred, inasmuch as, if the subsequent suit had been brought at the time when the first suit was brought, the Munsif would have been competent to try it.—*Gopi Nath Chobey v. Bhugwat Pershad*, I. L. R., 10 Cal. 697. [May 7, 1884.]

THROUGH ignorance of the position of affairs, one only of two persons, joint owners in a property, was sued for a debt for which the property had been pledged by the person sued, and a decree was obtained and execution issued against the property; and in such execution-proceedings the other sharer put in a claim, and obtained an order releasing her share of the property from attachment. A second suit was then brought by the judgment-creditor against both sharers, for the purpose of making the share of the co-sharer, who had not been previously sued, available to satisfy the defendant, and praying that the order releasing the property from attachment might be set aside. *Held* that such a suit would lie, and would not be barred as *res judicata*.—Nobin Chandra Roy v. Magantara Dassya, I. L. R., 10 Cal. 924. [June 26, 1884.]

CERTAIN persons, claiming by right of inheritance to C, sued B, N, A, K, and others for possession of certain immoveable property, and, on appeal to the High Court in August 1876, their claim was decreed in full. In the course of the litigation which ended in that decree, Z purchased certain immoveable property from B, N, A, and K. Z was subsequently dispossessed of such property in execution of the decree of August 1876. He thereupon sued the holders of that decree for possession of the same, alleging that his vendors had inherited it from D; that the figures of the total of C's property given in the plaint in the former suit were erroneous; that the property now in suit was not affected by that decree, and that he had been improperly dispossessed of it. It appeared that there was, in fact, a mistake in the total of the extent of C's property as stated in the plaint in the former suit. *Held* that the plaintiff, having purchased *pendente lite*, was bound by the decree of the High Court against the persons through whom he claimed; that the claim in the former suit having been decreed in full, the property now in suit was then decreed to the present defendants; and that the claim of the plaintiff to go behind that decree could not be entertained.—Hukm Singh v. Zadki Lal, I. L. R., 6 All. 506. [June 30, 1884.]

IN 1879 the plaintiff brought a suit against the defendants to recover Rs. 119, which he alleged had been wrongfully exacted from him by the defendants as enhanced rent of certain land in his occupation. He claimed to be owner of the land subject to a quit rent payable to the defendants. The defendants denied his ownership, and asserted their right to levy the enhanced rent. The lower Court held that the defendants were entitled to the enhanced rent, and dismissed the plaintiff's claim, and the decree was confirmed, in appeal, by the District Court. The plaintiff appealed to the High Court, which held that the plaintiff's claim being for an amount less than Rs. 500 and within the cognizance of a Court of Small Causes, no second appeal lay. In 1883 the plaintiff brought the present suit in the District Court to recover from the defendants the sum of Rs. 689 alleged to have been wrongfully exacted from him by the defendants as enhanced rent of the land in question. He made the same allegations as in the former suit. The District Judge dismissed the suit, holding it to be *res judicata*. The plaintiff appealed to the High Court. *Held* that, although the material question in both suits was the same, *viz.*, as to the defendants' right to enhance the plaintiff's rent, yet the decision of the District Court upon that point in the previous suit was not *res judicata* so as to prevent the question being again raised between the parties. From the decision in the former suit there was no appeal by reason of the suit being one for an amount less than Rs. 500. Had that suit been for a larger amount, the decision of the District Court would have been subject to an appeal to the High Court. It could not have been intended by the Legislature that a decision should acquire a conclusive importance from the fact of its being made in a suit for a small amount which it could not have had if the amount was larger. The former decision could not be appealed against to the High Court, and thus, though the District Courts, which gave that decision, was in one sense "competent to try" the second suit, and did try it, yet it was not competent to try the second suit with final effect, as it had tried the earlier one. In s. 13 of the Civil Procedure Code (Act XIV. of 1882) the words "competent to try such subsequent suit or issue" must mean "competent to try the suit or issue with conclusive effect." The District Court could not, in the present suit, have tried with conclusive effect, and disposed of the issue tried in the first suit, and hence the prior decision was not *res judicata*.—Bholabhai v. Adesang, I. L. R., 2 Bom. 75. [Aug. 12, 1884.]

WHEREA A Division Bench of the High Court decided, as a point of law, that a property had not passed under a certain deed of sale, and subsequently the decision on that point of law was in another case disapproved of by a Full Bench, the decision of the Division Bench (where the same plaintiff has again sued to recover the same property relying on the same deed of sale) is no less a *res judicata*, because it may have been founded on an erroneous view of the law, or a view of the law which a Full Bench has subsequently approved.—Gowri Koer v. Audh Koer, I. L. R., 10 Cal. 1087. [Sep 1, 1884.]

IN 1875, P sued in a Munsif's Court to eject a tenant from a house, and to recover arrears of rent. S intervened, and claimed the house under a deed of gift. The value of the property comprised in the deed of gift exceeded the limit of the pecuniary jurisdiction of the Munsif's Court. The suit was dismissed; but on appeal the claim of S under the deed of gift was adjudicated upon and rejected, and P obtained a decree for the land. In 1882, S sued P to recover all the property comprised in the deed of gift. *Held* that S was estopped by the decree in the former suit from claiming the house. It was contended by P that the deed of gift was invalid. *Held* that as to the validity of the deed of gift, the decree of the Munsif's Court was not the decree of a competent Court within the meaning of s. 13 of the Code of Civil Procedure, 1882, and, therefore, that S was not estopped from showing that the deed was valid, and claiming the rest of the property comprised therein.—*Pathuma v. Salimamma*, I. L. R., 8 Mad. 83. [Oct. 20, 1884.]

It is by the decree and not by the judgment that a question of *res judicata* must be decided. In 1881 A sued K and others claiming a declaration of his title to certain land and an injunction against interference with his possession. K claimed part of the land by purchase from M. The Munsif decreed for A, and this decree was confirmed on appeal by the District Judge, but in his judgment the District Judge recorded that K's claim was not adjudicated upon, and that he should bring a fresh suit if he had any claim. In 1883 K sued A to recover the land, which he claimed by purchase from M. A pleaded that the claim was *res judicata* by virtue of the decree in the former suit. The District Munsif and, on appeal, the District Judge held that the claim was not *res judicata*, and decreed for K. *Held*, on appeal to the High Court, that, as no reservation was made in the decree of K's right to bring another suit, the plea of *res judicata* was good, but that, under the circumstances, an opportunity should be given to K to apply to the District Court to have the decree in the former suit brought into conformity with the judgment. This having been done, the decree of the lower Courts was confirmed.—*Avula v. Kuppu*, I. L. R., 8 Mad. 77. [Oct. 30, 1884.]

A COMPETENT Court having decided upon an issue directly raised in a suit brought by a person alleging himself to have been adopted, that this adoption had not taken place, it was held that the present suit was barred under Act X. of 1877, s. 13, as *res judicata*, having been brought by the son of the defendant in the former suit, claiming through his father, to establish the same adoption; and that the section applied, although the suits related to different properties. The establishment of the adoption alleged in the first suit would have obliged the father of the present plaintiff to share with the adopted son his ancestral estate. That adoption having been negatived, the son, in this suit, ought to be estopped from making title on the ground that the adoption had placed the person, from whom he claimed to inherit, in the relation of father's brother to him. Where irrelevant matter had been introduced into the record, the Registrar was directed to tax the costs as if the record had not contained what he might consider to have been inserted unnecessarily.—*Pittapur Raja v. Buchi Sitayya*, I. L. R., 8 Mad. 219. [Nov. 21, 1884.]

HELD that an order by a Settlement Officer directing that certain persons should be recorded as the sub-proprietors of certain land, as they claimed to be, and not as lessees, as certain persons asserted that they were, did not operate as *res judicata* in a suit by the latter persons against the former for a declaration that the former were not sub-proprietors of the land, but lessees thereof, the Settlement Officer not being competent, under Act XIX. of 1873 (N. W. P. Land Revenue Act), to try such a question of right.—*Tota Ram v. Har Kishan*, I. L. R., 7 All. 224. [Dec. 6, 1884.]

THE decision in a suit, in order to be final and conclusive, as *res judicata* upon an issue raised in another suit, must be the decision of a Court which would have had jurisdiction to decide the question raised in the subsequent suit, in which the prior decision is given in evidence as conclusive. This proposition, stated in the judgment in *Mussumat Edun v. Mussumat Bechuu* (8 W. R. 175), and affirmed by the Judicial Committee in *Misir Raghobardial v. Sheo Baksh Singh* (I. L. R., 9 Cal. 439), is applicable equally to cases under Act VIII. of 1859, s. 2 (as supplemented by the general law), and to cases under the more complete enactment in Act X. of 1877, s. 13, which is not to be construed as having altered the former law. A suit was brought in the Court of a Subordinate Judge by a Hindu against the widow of his deceased brother, claiming his property by right of survivorship, the issue being whether, at the death of the latter, the ownership of the brothers was joint or separate. An order under Act XXVII. of 1860, granting a certificate to the widow, did not, on the above issue, operate as *res judicata* in the widow's favour, being a proceeding of representation, and not otherwise of title. *Held* also that a decision of the same issue in a Munsif's Court in a rent-suit brought by the widow, the surviving brother on his application having been made a party defendant under

s. 73 of Act VIII. of 1859, did not constitute a *res judicata* in her favour. *Krishna Be-hary Roy v. Brojeswari Chowdhry* (1. L. R., 1 Cal. 144) referred to and followed. *Held* also that the brother having appealed against a decree dismissing the suit as *res judicata* (the judgment which that decree followed having, nevertheless, found that the widow was disentitled by reason of the brothers having been, in fact, joint in estate), the widow could have supported the decree, without filing a cross appeal as to that finding, on the ground that the decree had been rightly made (though not for the reason given) in her favour. —*Run Bahadur Singh v. Luchu Koer*, 1. L. R., 11 Cal. 301. [Dec. 13, 1884.]

S SUE K for four bonds, alleging that the same had been satisfied. K had formerly sued S on two of these bonds. S had alleged in defence of that suit that those two bonds, as also the other two, had been satisfied. It was decided in that suit that not one of the bonds had been satisfied. *Held* by Petheram, C.J., and Oldfield, Brodhurst, and Duthoit, JJ., that the only issue in the former suit which had to be decided being whether the bonds on which that suit was brought had been satisfied or not, the second suit was, under s. 13 of the Civil Procedure Code, *res judicata* only in respect of those bonds, and not in respect of the other two bonds. The Court which tried the former suit had not jurisdiction to try the subsequent suit. *Per* Mahmood, J.—This being so, if the word “suit” in s. 13 were taken literally, it might, with some plausibility, be contended that there was no *res judicata* in respect of any of the bonds. The word “suit,” however, must be understood to mean such a matter as might have formed the subject of a separate suit independently of the special provisions of the Civil Procedure Code, such as s. 45, which enables the plaintiff to unite several causes of action in one and the same suit. Adopting this interpretation, it was clear that the two bonds which were the subject of the former suit could not be allowed to form the subject of litigation again. As to the other two bonds, which were not the subject-matter of the former suit, they did not, in the former suit, constitute a matter “directly and substantially in issue,” within the meaning of s. 13; and even if they were “directly and substantially in issue,” the decision in the former suit would not support the plea of *res judicata*, because the Court which tried that suit was not a Court of jurisdiction competent to try the subsequent suit in which the plea was raised.—*Sheoraj Rai v. Kashi Nath*, 1. L. R., 7 All. 247. [Dec. 13, 1884.]

THE words of s. 13 of the Civil Procedure Code, “in a Court of jurisdiction competent to try such subsequent suit,” refer to the jurisdiction of the Court at the time when the first suit was brought. Where, therefore, a suit was brought and decided in 1867 in the Court of a Deputy Collector, that Court being at the time of suit the only Court competent to try suits of the nature of the one brought, and subsequently a second suit, regarding the same subject and between some of the same parties and representatives of others, was brought in 1881 in the Court of a Munsif, which latter suit, if it had been brought in 1867, would have been cognizable by a Deputy Collector alone, *held* that the decision of the Deputy Collector was a bar to the second suit under s. 13 of the Civil Procedure Code. The principle in *Gopinath Chobey v. Bhagwat Pershad* (1. L. R., 10 Cal. 697) approved. —*Raghunath Panja v. Issur Chunder Chowdhry*, 1. L. R., 11 Cal. 153. [Dec. 22, 1884.]

IN 1877, S, claiming to be the adopted son of M, sued A, the widow of M, to recover his estate. A denied the adoption. S failing to adduce any evidence, the suit was dismissed under s. 158 of the Code of Civil Procedure, 1877. In 1882, by an agreement made between A and S, A acknowledged the title of S as adopted son of M. A having died, a suit was brought against S by a reversioner of M to recover the estate of M. *Held* that S was estopped by the decree in the former suit from setting up his claim as adopted son against the plaintiff, and that the subsequent agreement between A and S did not affect plaintiff's right.—*Arunachala v. Panchanadam*, 1. L. R., 8 Mad. 348. [Feb. 13, 1885.]

IN a suit to obtain possession of certain property and to set aside a deed called a deed of endowment (*wakf-nama*), on the ground that the defendant had fraudulently obtained its execution, the defendant pleaded (1) that the deed was a valid one, and (2) that she was in possession of the property in satisfaction of a dower-debt, and her possession could not be disturbed so long as the debt remained unsatisfied. The Court of first instance held that the deed was invalid, but the defendant was entitled to remain in possession of the property till her dower-debt was satisfied, and the Court passed a decree which merely dismissed the suit, without embodying the finding as to the deed. On appeal by the plaintiff to the District Judge, the defendant filed objections under s. 561 of the Civil Procedure Code in regard to the first Court's decision that the deed of endowment was invalid. The Judge dismissed the plaintiff's appeal, affirming the finding as to dower, and, refusing to decide the question of the validity of the deed as being unnecessary for disposal of the claim, disallowed the defendant's objections. The defendant appealed to

the High Court. *Held* by the Full Bench (Oldfield and Mahmood, JJ., dissenting) that if a decree is, upon the face of it, entirely in favour of a party to a suit, such decree being the thing which by law is made appealable, and nothing else, that party has no right of appeal therefrom. If, in the judgment of which such decree is the formal expression, findings have been recorded upon some issues against that party, and he desires to have formal effect given to them by the decree, so as to allow of his filing objections thereto under s. 561 of the Civil Procedure Code, or of appealing therefrom under s. 540, he must take steps under s. 206 to have the decree properly brought into conformity with the judgment, so that there may be matters on the face of it to show that something has been decided against him; but if he fails to take this course, the decree, though in general terms, will stand good as finally deciding the issues raised by the pleadings upon which the ultimate determination of the cause and the decree itself rested. The findings in a judgment upon matters which subsequently turn out to be immaterial to the grounds upon which a suit is finally disposed of, as to the plaintiff's right to any portion of the relief sought by him as declared by the decree, amount to no more than *obiter dicta*, and do not constitute a final decision of the kind contemplated by s. 13 of the Civil Procedure Code. *Held* also that, in the present case, the Judge was right in holding that the question as to the validity or otherwise of the deed of endowment was wholly immaterial. The judgment of Straight, J., in *Lachman Singh v. Mohan* (I. L. R., 2 All. 497), approved and followed. *Per* Oldfield, J., *contra*, that the decree, to agree with the judgment and fulfil the requirements of s. 206 of the Civil Procedure Code, should contain the material points for determination arising out of the claim, and material for the decision thereon; that, if this has not been done, the defect is a good ground of appeal, notwithstanding that the decree, on its face, may be altogether in favour of the appellant, and notwithstanding that he may not have applied for amendment of the decree under s. 206, or for review of judgment; and that, in the present case, the defect in the decree would afford a good ground of appeal. *Per* Mahmood, J., that inasmuch as the provisions of s. 13 of the Civil Procedure Code relate as well to the trial of issues as to the trial of suits, and in the present case the validity or otherwise of the deed was a matter directly and substantially in issue between the parties, and was adjudicated upon, the finding of the first Court upon that issue was not a mere *obiter dictum*, but would be binding upon the defendant as *res judicata*, notwithstanding the fact that the suit against her was dismissed on the ground that she held possession of the property in lieu of dower; that whatever has the force of *res judicata* is necessarily appealable; that the word "from" as used in s. 540 or s. 584, and the expression "objection to the decree" in s. 561, refer not only to matters existing, upon the face of the decree, but also to those which should have existed, but do not exist there; and that the defendant in the present case was aggrieved or injured by the omission in the decree of the first Court, and was therefore entitled to file objections to it, and, for the same reason, to appeal to the High Court from the decree of the lower Appellate Court. Also *per* Mahmood, J., that it was doubtful whether the reliefs contemplated by ss. 206 and 623 were open to the defendant; but that, even conceding that she ought to have sought her remedy under either of those sections, her neglect to do so did not make her incapable of obtaining the same result by the exercise of her right of appeal. *Anusuyabai v. Sakkaram Pandurang* (I. L. R., 7 Bom. 484), *Man Singh v. Narayan Das* (I. L. R., 1 All. 480), *Mohan Lal v. Ram Dayal* (I. L. R., 2 All. 843), *Niamat Khan v. Phadu Beldia* (I. L. R., 6 Cal. 319), and *Pan Kuar v. Bhagwant Kuar* (N. W. P., H. C. R., 1871, p. 19), referred to.—*Jamaitunnissa v. Luftunnissa*, I. L. R., 7 All. 606. [Feb. 21, 1885.]

A WRONG decision on a question of *res judicata* is not a subject for the interference of the High Court under s. 622 of the Code of Civil Procedure (Act XIV. of 1882).—*Hari Bhikaji v. Naro Vishvanath*, I. L. R., 9 Bom. 432. [Mar. 18, 1885.]

WHEN the karnavan of a Malabar tarwad has not been impleaded as such in a suit, and there is nothing on the face of the proceedings to show that it was intended to implead him in his representative character, tarwad property cannot be attached and sold in execution of the decree, even though it is proved that the decree was obtained for a debt binding on the tarwad. Although the property of a tarwad may be attached and sold in execution of a decree when the karnavan is sued as representative of the tarwad, members of the tarwad who are not parties to the proceeding, and have not been represented in the manner prescribed by the Code of Civil Procedure, are not estopped from showing that the debt for which the decree was passed was not binding on the tarwad.—*Ittiachan v. Velappan*, I. L. R., 8 Mad. 484. [April 24, 1885.]

IN 1881 A sued B, C, and others for damages for the loss of his crops by the diversion of a water-channel by the defendants. A claimed a right common to himself and other raiyats of his village to use the water during the day time under an arrangement, by which B, C, and the other defendants in the suit, were entitled to use the water during

the night time. In 1882 A and four other raiyats, not parties to the former suit, sued B, C, and thirteen others not parties to the former suit, for a decree declaring that the plaintiffs were entitled to the exclusive use of the water in the channel by day. The Lower Courts held that the suit was barred by s. 13 of the Code of Civil Procedure. *Held* that as between the plaintiffs other than A and the defendants, and as between A and the defendants other than B and C, the suit was not barred by s. 13 of the Code of Civil Procedure.—*Thānakōti v. Muniappa*, I. L. R., 8 Mad. 496. [April 25, 1885.]

A decree obtained by a mortgagor, which declared that the mortgagee should deliver up possession on payment of the sum found due to him, not having been executed for three years, a purchaser of the equity of redemption sued the mortgagee to redeem.—*Held* that this suit was not barred by the former decree, and that the plaintiff was entitled to redeem. *Sāmi v. Sōmasundram* (I. L. R., 6 Mad. 119) approved. *Gān Sāvāt Bāl Sāvāt v. Nārayan Dhond Sāvāt* (I. L. R., 7 Bom. 467) dissented from.—*Karuthasāmi v. Jaganātha*, I. L. R., 8 Mad. 478. [April 27, 1885.]

In 1883, plaintiff sued to recover certain land from the defendant on a demise of 1856, which he alleged was a renewal of a prior demise of 1835. The suit was dismissed on the ground that the demise of 1856 was not proved. Plaintiff then sued to recover the same land on the demise of 1835 and on title. *Held* that the decree in the former suit was no bar to this suit.—*Kandunni v. Katamma*, I. L. R., 9 Mad. 251. [Dec. 10, 1885.]

TWO-THIRDS of a village were sold by T, P, and B. B was the widow of S, her name being recorded in respect of the property formerly recorded in his name, and what she sold was his one-third share in the village, the other one-third being sold by T and P. The vendors having refused to give possession of the property, the purchasers sued them for possession of it, and joined as defendants to the suit C, D, and M, to whom belonged the remaining one-third share in the village. These latter persons contended, *inter alia*, that the family was a joint one, and that B was not competent to alienate her deceased husband's share in the village. The Court decided that the family was joint. After B's death her daughter K, whose name had been recorded in place of her mother's, made a usufructuary mortgage of another share in which her deceased father had formerly owned a share. A suit was brought by certain persons who had purchased the right in the same village of the representatives in interest of C, D, and M, against K, her mortgagee, and their vendors, to set aside the mortgage and recover the interest which they had purchased. They contended that the family was joint, and that the question whether it was joint or divided was *res judicata* by reason of the decision in the former litigation. *Held* that the question whether the family was joint or divided had not, in the former suit, been determined among the defendants *inter se*, but simply as against the plaintiff, and could only be *res judicata* against him or parties claiming under the same title; and the decree in that suit was therefore not binding against K in the hands of the present plaintiffs, who were not the assignees of the plaintiff in the former suit, but of persons who were arrayed in it as defendants along with B, K's mother, and on the same side. *Shadal Khan v. Amin-ullah Khan* (I. L. R., 4 All. 92) referred to by Straight, J., and distinguished by Tyrrell, J.—*Narain Kuar v. Durjan Kuar* (I. L. R., 2 All. 738) referred to by Straight, J.—*Bhagwant Singh v. Tej Kuar*, I. L. R., 8 All. 91. [Dec. 24, 1885.]

In a suit by a landlord against his tenant for ejectment, the defences were: (1) no notice to quit had been served; and (2) the tenure was a permanent one. The suit was dismissed on the first ground; the Court holding at the same time that the tenure was not a permanent one. In a subsequent suit for ejectment from the same holding, brought by the same plaintiff against the same defendant, the defences were: (1) the tenure was permanent; and (2) the plaintiff was estopped by the conduct of his predecessor in title from asserting as against the defendant that the tenure was not a permanent one. The lower Appellate Court found the question of estoppel in favour of the defendant, and dismissed the suit. On appeal to the High Court, *held* that the decision was right, and must be affirmed. *Semble*, that where a former suit between the same parties in respect of the same subject-matter has been dismissed on a preliminary point, a finding in that suit on the merits in the plaintiff's favour will not bar the defendant from putting forward the same defence on the merits in a subsequent suit by the same plaintiff against the same defendant. *Semble*, that the case of *Niamut Khan v. Phadu Buldia* (I. L. R., 6 Cal. 319) has been impliedly overruled by the case of *Run Bahadoor Singh v. Luchoo Keer* (L. R., 12 I. A. 23; I. L. R., 11 Cal. 301).—*Nundo Lal Bhuttsacharjee v. Bidhoo Mookhy Debee*, I. L. R., 13 Cal. 17. [Mar. 9, 1886.]

In a suit to recover a sum of money due as wages, the plaintiff alleging that the defendant had engaged him to sell cloth on his account at a monthly salary, the defendant claimed a set-off as the price of cloth which, he alleged, the plaintiff had sold on his

account on commission. It appeared that the defendant had previously sued the plaintiff to recover the same amount as was now claimed by way of set-off as being due for the price of cloth sold and delivered by the defendant to him; and the plaintiff (then defendant) pleaded that there had been no sale to him, but the cloth had been delivered to him on commission-sale. The suit was dismissed on the ground that there was no proof of a sale of cloth, and the question whether any sum was due for cloth sold on commission-sale was not gone into. The cloth now alleged to have been delivered off commission-sale was the same as that alleged in the former suit to have been actually sold to the plaintiff. *Held* that the defendant was entitled, under s. 111 of the Civil Procedure Code, to set-off the amount claimed as due for goods sold on commission against the plaintiff's demand, and that the claim for such set-off was not barred under the provisions of s. 13. *Held* also that the court-fee payable on the claim for set-off was the same as for a plaint in a suit.—*Amir Zama v. Nathu Mal*, I. L. R., 8 All. 396. [April 5, 1886.]

THE purchaser of certain immoveable property in execution of a decree sued for possession of the same. The suit was dismissed "in its present form" (*barkhaisiyat maujuda*) upon two grounds: first, with reference to s. 10 of the Court-fees Act (VII. of 1870), that the suit was under-valued, and the plaintiff had failed to pay, within the time fixed, additional court-fees required by the Court; and, secondly, for misjoinder. The purchaser subsequently brought a second suit. *Held* that the dismissal of the former suit was not, under the circumstances, a decision within the meaning of s. 13 of the Civil Procedure Code such as could bar the second suit by way of *res judicata*. *Per* Mahmood, J.—The object of s. 10, and indeed of the whole of the Court-fees Act, is to lay down rules for the collection of one form of taxation, and the rule that statutes which impose pecuniary burdens, or encroach upon, or qualify the rights of, the subject, must be strictly construed, applies with special force to such provisions of the Act as provide a penalty, whatever its nature may be. S. 10 is simply a penal clause to enforce the collection of the court-fees, and dismissal of a suit under its provisions cannot operate as *res judicata*. Also, *per* Mahmood, J.—The condition in s. 13 of the Civil Procedure Code, that the former suit must have been "heard and finally decided," means that a former judgment proceeding wholly on a technical defect or irregularity, and not upon the merits, is not a bar to a subsequent suit for the same cause of action. It is not every decree or judgment which will operate as *res judicata*, and every dismissal of a suit does not necessarily bar a fresh action. It is necessary also to show that there was a decision finally granting or withholding the relief sought. *Ramanath Roy Chowdhri v. Bhagbut Mohaputter* (3 W. R., Act X. Rul. 140), *Shokhee Bewah v. Melhdee Mundul* (11 W. R. 327), *Dullabh Jogi v. Narayan Lakhu* (4 Bom. H. C. R., A. C., 110), *Rungrav Ravji v. Sidhi Mahomed Ebrahim* (I. L. R., 6 Bom. 482), *Fateh Singh v. Lachmi Koer* (13 B. L. R., Ap. 37), *Roghoonath Mundul v. Juggut Buidhoo Bose* (I. L. R., 7 Cal. 214), and *Sarkappa Chetti v. Rani Kolandapuri Nachiyar* (3 Mad. H. C. Rep. 84), referred to. Also, *per* Mahmood, J.—The words *barkhaisiyat maujuda* must be taken as amounting to a permission to the plaintiff to bring a fresh suit within the meaning of s. 373 of the Civil Procedure Code, and could only mean that the Judge using them in his decree had no intention to decide the case finally, so as to bar the adjudication upon the merits of the rights of the parties in a future litigation between them. The procedure provided by Chapter XXII. of the Code is not the only manner in which a plaintiff can come into Court for the second time to ask for adjudication upon the merits of his rights, which were not adjudicated upon on the former occasion owing to some technical defect which proved fatal to the former suit. *Ganesh Rai v. Kalka Prasad* (I. L. R., 5 All. 595) dissented from. *Watson v. Collector of Rajshahye* (13 Moore's I. A. 160), and *Salig Ram v. Tirbhawan* (Weekly Notes, 1885, p. 171), referred to.—*Muhammad Salim v. Nabian Bibi*, I. L. R., 8 All. 282. [April 28, 1886.]

UPON the death of G, a Muhammadan, his estate was divisible into eight shares, two of which devolved upon his son A, one upon each of his five daughters, and one upon his widow B. The name of B only was recorded in the revenue registers in respect of the zamindari property left by G. In 1876, A and B gave to X a deed of simple mortgage of 2½ biswas out of a 5-biswas share of a village included in the said property. In 1878, A and B gave to S a deed of simple mortgage of the 5 biswas, which were described in the deed as the widow's "own" property. In 1882, X obtained a decree upon his mortgage for the sale of the mortgaged property, and it was put up for sale and purchased by X himself in January 1884. In February and November 1884, the daughters of G obtained *ex-parte* decrees against A and B in suits brought by them to recover their shares by inheritance in the 5 biswas. In 1885, S brought a suit upon his mortgage of 1878, claiming the amount due thereon and the sale of the whole 5 biswas. To this suit he made defendants A and B, G's daughters, and X, alleging that the decrees of February and November 1884 were fraudulently and collusively obtained; and as to the auction-sale of January 1884, that the 2½ biswas were sold subject to his mortgage, he

not having been made a party to the suit brought by X upon the deed of 1876, and, therefore, not being bound by any of the proceedings taken therein or consequent thereto. It was contended that B's position as head of the family entitled her to deal with the property so as to bind all the members of the family, though using her name only, and it was suggested that, at the time of the mortgage of 1878, some of the daughters were minors. On behalf of the daughters it was contended (*inter alia*) that the decrees obtained by them, against A and B in February 1884 were conclusive, by way of *res judicata*, against the plaintiff, who, as mortgagee from A and B, claimed under a title derived from them. *Held* that there being no evidence to show that the decrees of February and November 1884 were fraudulently and collusively obtained, the Court of first instance was right in exempting the shares of the daughters from the lien sought to be enforced by the plaintiff; and that, inasmuch as the deed of 1876 was prior in date to the plaintiff's deed of 1878, and there was no allegation of fraud or collusion in regard to it, the decree and sale in enforcement of the former deed would defeat the rights of the plaintiff under the latter. *Khub Chund v. Kalian Das* (I. L. R., 1 All. 240) and *Ali Hasan v. Dhirja* (I. L. R., 4 All. 518) referred to. *Per* Mahmood, J.—According to the Muhammadan Law, the surviving widow, though held in respect by the members of the family, would not be entitled to deal with the property so as to bind them, and the entry of her name in the revenue registers in the place of her deceased husband would probably be a mere mark of respect and sympathy. Her position in respect of her husband's estate is ordinarily nothing more or less than that of any other heir, and even where her children are minors, she cannot exercise any power of disposition with reference to their property, because although she may, under certain limitations, act as guardian of their persons till they reach the age of discretion, she cannot exercise control or act as their guardian in respect of their property without special appointment by the ruling authority, in default of other relations who are entitled to such guardianship. Even, therefore, if some of the daughters in the present case were minors at the time of the plaintiff's mortgage, their shares could not be affected thereby. They could only be so affected if circumstances existed which would furnish grounds for applying against them the rule of estoppel contained in s. 115 of the Evidence Act, or the doctrine of equity formulated in s. 41 of the Transfer of Property Act, but here no such circumstances existed. Also *per* Mahmood, J.—The decrees of February and November 1884 did not operate as *res judicata* against the plaintiff, inasmuch as a mortgagee cannot be bound by a decision relating to the mortgaged property in a suit instituted after his mortgage, and to which he was not a party. After a mortgage has been duly created, the mortgagor, in whom the equity of redemption is vested, no longer possesses any such estate as would entitle him to represent the rights and interests of the mortgagee in a subsequent litigation, so as to render the result of such litigation binding upon, and conclusive against, such mortgagee. The plaintiff in the present suit could not be treated as a party claiming under his mortgagors within the meaning of s. 13 of the Civil Procedure Code, and that section must be interpreted as if, after the words "under whom they or any of them claim," the words, "by a title or arising subsequently to the commencement of the former suit," had been inserted. *Dooma Sahoo v. Joonarain Loll* (12 W. R. 362) and *Bonomalee Nag v. Koylash Chunder Dey* (I. L. R., 4 Cal. 692) referred to; *Outram v. Morewood* (3 East. 346). *Boykuntath Chatterjee v. Ameroonissa Khatoun* (2 W. R. 191); *Katama Natchiar v. Srimut Raja Moottoo Vijaya Raganadhia* (9 Moore's I. A. 539), and *Ram Coomar Sein v. Prasunno Coomar Sein* (W. R., Jan. and July, 1861, p. 375), distinguished. The principles of the rule of *res judicata*, as part of the law of civil procedure properly so called, and those of the rule of estoppel, as part of the law of evidence, explained and distinguished.—*Sita Ram v. Ameer Begam*, I. L. R., 8 All. 324. [May 5, 1886.]

THE plaintiffs, as purchasers of a share of an estate, sued to recover their share of the rent of certain tenures held in that estate by the defendants. The defendants denied being in possession as alleged. Another co-sharer in the same estate had previously brought a suit against the same defendants for the rent of the same tenures, and in that suit the present plaintiffs and other co-sharers of the estate were made co-defendants, and the decision in that suit was that the present defendants were in possession, and were liable to pay to the then plaintiff his share of the rent. *Held* (Mitter, J., dissenting) that the decree in the former suit was not a *res judicata*, or even admissible as evidence in the present suit.—*Surendra Nath Pal Chowdhry v. Brojo Nath Pal Chowdhry*, I. L. R., 13 Cal. 352. [Aug. 14, 1886.]

A JUDGMENT-CREDITOR of the plaintiff, having obtained a decree against the plaintiff attached the house in dispute. The defendant intervened in 1878, and set up a previous purchase of the house by himself from the plaintiff. The attachment was removed. The judgment-creditor brought a suit against the defendant for declaration that the property belonged to the plaintiff, and, as such, was liable to be attached and sold in

execution. At the hearing of this suit the judgment-creditor did not appear. The defendant appeared, and produced a sale-deed, which the Court found proved, and dismissed the judgment-creditor's suit. The plaintiff now brought the present suit against the defendant to recover possession of the house. The defendant contended (*inter alia*) that the dismissal of the former suit brought by the plaintiff's judgment-creditor operated as *res judicata* under s. 13 of the Civil Procedure Code (Act XIV. of 1882). Both the lower Courts disallowed the defendant's contention, holding that the suit was not barred. On appeal by the defendant to the High Court, *held*, confirming the lower Courts' decree, that the dismissal of the former suit did not operate as *res judicata* in the absence of any evidence to show that the judgment-creditor, in point of fact, represented the plaintiff so as to constitute him a party to the suit. It was contended for the defendant that the plaintiff, as the judgment-debtor, might, at any rate, be regarded as a party against whom the order in the execution-proceedings in 1878 was made, and that the present suit was, therefore, barred by limitation. *Held* that the plaintiff could not be regarded as a party to those proceedings. Whether a judgment-debtor is to be regarded as a party to an investigation under s. 278 of the Code, must depend upon the facts of each case. As the question of limitation was raised for the first time in second appeal, it could not be decided against the plaintiff.—*Shivappa v. Dod Nágaya*, I. L. R., 11 Bom. 114. [Sep. 14, 1886.]

IN a suit by A, the *inámddár*, against B, the *khot* of a certain village, it was decided that A was the proprietor of the forest or waste lands attached to the village. *Held* that this decision did not operate as *res judicata* between A and B so as to estop B in a subsequent suit from setting up a proprietary title, as against A, to the cultivated lands in the village.—*Moro Abáji v. Náráyan Dhondbhat Pitre*, I. L. R., 11 Bom. 355. [Sep. 30, 1886.]

A DECREE having been obtained against the karnavan and senior anandravan of a Malabar tarwad, whereby the tarwad was dispossessed of certain land, the junior members of the tarwad, who had not been impleaded in the suit sued to recover the land. *Held* that the plaintiffs were entitled to recover upon proof that the decree in the former suit was not substantially correct, and that they were not bound to prove *mala fides* on the part of their karnavan in defending the former suit as a condition precedent to recovery.—*Sridevi v. Kelu Eradi*, I. L. R., 10 Mad. 79. [Oct. 12, 1886.]

IN a suit in which the plaintiffs claimed exclusive possession, and, in the alternative, joint possession of certain land, evidence was taken upon the issues raised; but the Court, without discussing the evidence, held that the alternative claims were "contradictory," and the plaintiffs' claim, therefore, "uncertain," and accordingly ordered "that the plaintiffs' claim, as brought, be dismissed with costs." The plaintiffs did not appeal from this decision, but subsequently brought a suit against the same defendants, claiming joint possession of the same property. *Held* that the suit was barred by s. 13 of the Civil Procedure Code, the Court in the former suit not having reserved to the plaintiffs the right to bring a fresh action. *Ganesh Rai v. Kalka Prasad* (I. L. R., 5 All. 595), *Muhammad Salim v. Nabian Bibi* (I. L. R., 8 All. 282), and *Watson v. Collector of Rajshahye* (13 Moore's I. A. 160), referred to by Tyrrell, J.—*Kudrat v. Dinu*, I. L. R., 9 All. 155. [Dec. 10, 1886.]

UPON an application made under Chapter IV. of the N. W. P. Land Revenue Act (XIX. of 1873) for partition of common land, in which the owners of six *pattis* were interested, into six equal parts, an objection was raised that the land should be divided into parts proportionate to the size of the different *pattis*. The Assistant Collector before whom the objection was made disallowed it with reference to the provisions of the *shajiq-ul-arz* in which the custom of the village was recorded, and made the partition in the manner prayed. No appeal was preferred by the objectors to the District Judge. The Collector confirmed the partition, and after an appeal to the Commissioner, the Assistant Collector's decision was upheld. The objectors then brought a suit in the Civil Court for a declaration that the defendants were only entitled to a share of the common land proportionate to the area of their *pattis*. *Held* that the objection which was raised in the Revenue Court was one which raised a question of title or of proprietary right in respect of the common land within the meaning of s. 113 of the N. W. P. Land Revenue Act; that the decision of the Assistant Collector was a decision within the meaning of s. 114 of the Act; and that, consequently, the suit was barred by s. 13 of the Civil Procedure Code. *Held* also that the question was not affected by any mistakes in procedure that had been made in the Revenue Courts.—*Amir Singh v. Naimati Prasad*, I. L. R., 9 All. 388. [Feb. 3, 1887.]

Extending to
Provincial S.
C. Courts.

When foreign judgment no bar to suit in British India. 14. No foreign judgment shall operate as bar to a suit in British India—

- (a) if it has not been given on the merits of the case :
- (b) if it appears on the face of the proceedings to be founded on an incorrect view of international law or of any law in force in British India :
- (c) if it is, in the opinion of the Court before which it is produced, contrary to natural justice :
- (d) if it has been obtained by fraud :
- (e) if it sustains a claim founded on a breach of any law in force in British India.

As *ex-parte* judgment of a French Court against a native of British India, not residing in French territory, upon a cause of action which arose in British India, imposes no duty on the defendant to pay the amount decreed so as to bar a suit in British India.—*Hinde and Co. v. Ponnath Brayan*, I. L. R., 4 Mad. 359. [Dec. 8, 1880.]

THE judgment of a foreign Court, obtained on a decree of a Court in British India, is no bar to the execution of the original decree.—*Pakuruddeen Mahomed Assan v. Official Trustee of Bengal*, I. L. R., 7 Cal. 82. [Mar. 28, 1881.]

A SUIT upon a foreign judgment is not cognizable by a Court of Small Causes established under Act XI. of 1865.—*Krishnan v. Pilo*, I. L. R., 6 Mad. 191. [Feb. 16, 1883.]

K SUE D C, who resided in British India, upon a bond executed by C in favour of K within the territory of P, a Native State, and obtained a decree. Having obtained satisfaction in part, K sued C upon the judgment of the Court of P in a British Indian Court at T. *Held*, reversing the decrees of the Lower Courts, that the Court at P had jurisdiction, and that K could sue upon the judgment of that Court in the Court at T.—*Kaliyugam v. Chokalinga*, I. L. R., 7 Mad. 105. [Aug. 23, 1883.]

CHAPTER II.

OF THE PLACE OF SUING.

Ditto.

Court in which suit to be instituted.

15. Every suit shall be instituted in the Court of the lowest grade competent to try it.

FOR the purpose of determining the question of jurisdiction the valuation of a suit should be computed according to the market-value of the subject-matter of the suit, and not according to the special rules applicable to valuation fixed in Act VII. of 1870.—*Kalubin Bhiwaji v. Vishram Mawaji*, I. L. R., 1 Bom. 543. [Feb. 14, 1877.]

A SUIT was brought for a dissolution of partnership between plaintiff and 1st defendant, and for an account as between them. It was alleged in the plaint that plaintiff and 1st defendant entered into partnership in 1864 to work a jungle in the North Arcot district which had been leased to plaintiff for three years. That 4th defendant was subsequently admitted a partner, and that the contract was carried on under the style of R T and Co. That in March 1867 4th defendant took up a contract in Madras, and another general partnership was established, of which plaintiff and 1st defendant were members; that the funds of the 1st firm became incorporated in the 2nd firm, which was styled K T and K, and that this firm undertook several contracts in Madras and Chingleput. Finally, that the cause of action was the refusal of 1st defendant to account, and accrued in North Arcot district, where all the defendants resided permanently. The District Judge dismissed the suit on the ground that, under s. 265 of the Indian Contract Act, he had no jurisdiction. *Held*, on appeal, that the District Court of North Arcot had jurisdiction, as the defendants were resident within the district. That the provision in the Contract Act is permissive, and does not prohibit a suit elsewhere than at the place where the partnership was carried on if a sufficient ground of jurisdiction exists.—*Javali Ramasami v. Sathambakam Thoruvengadasami*, I. L. R., 1 Mad. 340. [Nov. 5, 1877.]

WHERE a person has preferred a claim to property attached in execution of a decree on the ground that such property is not liable to such attachment, and an order is passed against him, and he sues to establish his right to such property, *held* that the value of the subject-matter in dispute in such suit, for the purposes of jurisdiction, will be the amount of such decree.—*Gulzari Lal v. Jadaun Rai*, I. L. R., 2 All. 790. [April 22, 1880.]

S. 6 of Act VIII. of 1859 (corresponding with s. 15 of Act X. of 1877), which provides that "every suit shall be instituted in the Court of the lowest grade competent to try it," does not affect the jurisdiction of a Subordinate Judge to try a suit wherein several causes of action are joined, the cumulative value of which is over Rs. 1,000; notwithstanding that, if separate suits had been brought on these several causes, such suits must have been instituted in the Court of the Munsif.—*Masaoollah Khan v. Ram Lall Agurwallah*, I. L. R., 6 Cal. 6. [May 7, 1880.]

A TESTATOR bequeathed the income of his "altamgha," "zamindari," and "thikadari" lands, situate in the districts of Delhi, Hissar, and Bulandshahr, to his five sons in equal shares, and to their issue; directing that one of the sharers should manage the estate, accounting yearly to the others, and receiving ten per cent. per annum. The lands described as "altamgha" were in the Bulandshahr district, within the local limits of the jurisdiction of the Civil Court of Meerut; and on them an establishment was maintained at the expense of the estate. At Hansi, in Hissar, there was also a residence belonging to the estate, and another at Delhi. The will directed that the brothers might, if they liked, live together at Bilaspur, and build houses "with mutual consent in the altamgha and zamindari," also that certain memorials of the testator were to be retained by the manager at Bilaspur. At this place the manager used to stay occasionally, though travelling, for the most part, about the estate during the cold weather. No particular place for rendering the yearly accounts was fixed, either by contract or in practice; but they were rendered by the manager to the sharers at different times and in different places, including Delhi, Bilaspur, and Hansi; at which last place, it being the sadr station of Hissar, the older records of the estate were kept. When this suit was brought, the manager was actually residing at the hill-station of Mussoorie, in the Saharanpur district, for the hot weather; and in his answer he stated that the unsettled accounts were open to inspection by the sharers at Bilaspur. *Held* that a person might "dwell" within the meaning of Act VIII. of 1859, s. 5, at more places than one; and that, on the evidence, this manager so dwelt at Bilaspur as to make him subject to the jurisdiction of the Meerut Court in this suit. It was, accordingly, not necessary to consider whether he was or was not also subject to that Court's jurisdiction by reason of the cause of action having arisen within its local limits; nor was it necessary to consider whether he had or had not such a dwelling place at Hansi as would have rendered him subject to the jurisdiction of the Hissar (Panjáb) Courts. Other questions disposed of in the Court of first instance having remained undecided by the High Court, which dealt with the question of jurisdiction alone, were considered with reference to whether there had or had not been shown any good reason for reversing or varying the order of the original Court. Among these, the question whether the manager's commission was to be calculated on the gross rental of the estate, or on the income divisible among the sharers, was *held* to be settled by the indication of the latter mode of calculation in the will.—*Sophia Orde v. Alexander Skinner*, I. L. R., 3 All. 91. [June 11, 1880.]

THE valuation of suits, for the purpose of jurisdiction, is perfectly distinct from their valuation for the fiscal purpose of court-fees. Therefore Court-fees Acts, which are fiscal enactments, are not to be resorted to for construing enactments which fix the valuation of suits for the purpose of determining jurisdiction.—*Dayachand Nemchand v. Hemchand Dharamchand*, I. L. R., 4 Bom. 515. [June 23, 1880.]

Per Petheram, C.J., and Brodhurst, Mahmood, and Duthoit, J.J.—The object of ss. 19 and 20 of the Bengal Civil Courts Act, 1871, was to create in the District Judge, Subordinate Judge, and Munsif concurrent jurisdiction up to Rs. 1,000. *Per Petheram, C.J.*—S. 15 of the Civil Procedure Code is a proviso to those sections. The word "shall" in that section is imperative on the suitor. The word is used for the purpose of protecting the Courts. The suitor shall be obliged to bring his suit in the Court of the lowest grade competent to try it. The object of the Legislature is that the Court of the higher grade shall not be overcrowded with suits. Whenever an Act confers a benefit, the donee may exercise the same or not at his pleasure. The proviso is for the benefit of the Court of the higher grade, and it is not bound to take advantage of it. If it does not wish to try the suit, it may refuse to entertain it. If it wishes to retain the suit in its Court, it may do so; it is not bound to refuse to entertain it. *Per Duthoit, J.*—The words in s. 57 of the Civil Procedure Code "shall be" are an instruction which the Court is bound to follow; and they are, therefore, a restraint upon jurisdiction. The effect, therefore, of the concurrent jurisdiction of Subordinate Judges and Munsifs is not to allow to a Subordinate Judge discretion as to accepting or not accepting for trial by himself suits cognizable by the inferior tribunal. *Brodhurst and Mahmood, J.J.*—S. 15 of the Civil Procedure Code is a rule of procedure, not of jurisdiction; and whilst it lays down that a suit shall be instituted in the Court of the lowest grade, it does not oust the jurisdiction of the Courts of higher grades. *Russick Chunder Mohunt v. Ram Lal Shaha* (22 W. R. 301),

Sircar v. Begum Bibi (25 W. R. 219), followed. *Per* Olfield, J.—S. 15 of the Civil Procedure Code is a provision entirely of procedure as distinct from jurisdiction, and its effect on s. 19 of the Bengal Civil Courts Act is that the jurisdiction of the District Judge and Subordinate Judge extends to all original suits cognizable by the Civil Court, subject in its exercise to a certain procedure, namely, that the suits be instituted in the Court of the lowest grade competent to try them. *Held*, therefore, by Petheram, C.J., and Oldfield, Brodhurst, and Mahmood, J.J., where a Subordinate Judge had tried a suit which a Munsif, a Court of a lower grade, might have tried, that the Subordinate Judge had not acted without jurisdiction. The plaint in such suit had been in the first instance presented to the Munsif who had returned it, to be presented to the Subordinate Judge. *Per* Duthoit, J.—The decree of the Subordinate Judge would not be liable to be reversed in appeal for want of jurisdiction, for the jurisdiction was there, though it ought not to have been exercised. This view of the matter was consistent with the received canon of construction, that unless the Legislature uses negative words, or words showing an intention to treat the observance of a rule of procedure as essential, the rule will ordinarily be treated as a direction only. Under the circumstances, therefore, the District Judge had, in appeal, correctly refused to entertain the plea of defect in jurisdiction. *Per* Mahmood, J.—The institution of a suit in a Court of higher grade than the Court which is competent to try it is not a question either as to the jurisdiction or affecting the merits of the case. It is a question of the kind provided for by s. 578 of the Civil Procedure Code, and the irregularity is not one which affects “the merits of the case or the jurisdiction of the Court,” within the meaning of the section. The plea of want of jurisdiction can be entertained for the first time at any stage of a suit, provided there is on the record sufficient material to substantiate it.—*Nidhi Lal v. Mazhar Husain*, I. L. R., 7 All. 230. [Dec. 13, 1884.]

ACT IX. of 1861 does not debar a District Munsif's Court from entertaining a suit by a Hindu father to recover possession of his minor son alleged to be illegally detained by the defendant.—*Krishna v. Reade*, I. L. R., 9 Mad. 31. [Mar. 19, 1885.]

ON the hearing of a suit in the Court of first instance, the Court came to the conclusion that the value of the property in dispute placed the claim beyond the jurisdiction of the Court; the suit was therefore dismissed with costs. On appeal this decision was reversed with costs, on the ground that the plaint ought to have been returned to the plaintiff for presentation in the proper Court. The defendant appealed to the High Court. *Held* that the defendant ought to have been allowed costs in both Courts, and that he was entitled to an appeal on that ground.—*Moshingan v. Mozari Sajad*, I. L. R., 12 Cal. 271. [July 6, 1885.]

Suits to be instituted where
subject-matter situate.

16. Subject to the pecuniary or other limitations prescribed by any law, suits

- (a) for the recovery of immoveable property,
 - (b) for the partition of immoveable property,
 - (c) for the foreclosure or redemption of a mortgage of immoveable property,
 - (d) for the determination of any other right to, or interest in, immoveable property,
 - (e) for compensation for wrong to immoveable property,
 - (f) for the recovery of moveable property actually under distraint or attachment,
- shall be instituted in the Court within the local limits of whose jurisdiction the property is situate :

Provided that suits to obtain relief respecting, or compensation for wrong to, immoveable property, held by or on behalf of the defendant, may, when the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction he actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.—In this section “property” means property situate in British India.

In a suit for foreclosure or sale of immoveable property, it appeared that the mortgagee had conveyed the mortgaged premises to trustees. The summons to one of the trustees was personally served upon his duly constituted agent, who was at the time of service in charge of the mortgaged premises. *Held* that the service was sufficient, the suit being one to obtain "relief respecting immoveable property" within the meaning of s. 16 of Act XIV. of 1882.—*Michael v. Ameena Bibi*, I. L. R., 9 Cal. 733. [May 7, 1888.]

In 1879 R gave J a bond containing a simple mortgage of immoveable property. Subsequently R and P jointly gave D a bond containing a simple mortgage of the same property. In 1881 D obtained a decree for the sale of the property under his mortgage, and it was put up for sale and purchased by the plaintiffs. In 1882 J obtained a decree in the Court of the Munsif of G (within the local limits of whose jurisdiction the property was not situated) for enforcement of his mortgage-bond by sale of the property. The plaintiffs objected to the sale, and, their objection having been disallowed, brought a suit for cancellation of J's decree, so far as it ordered the sale. *Held* that J's decree could only be regarded as a simple money-decree, because, as shown by s. 16 of the Civil Procedure Code, the Munsif had no power under the law to direct enforcement of hypothecation against immoveable property situate beyond the local limits of his jurisdiction, and neither the proviso to s. 16 nor s. 20 of the Code met the circumstances. *Held*, therefore, that the plaintiffs were entitled in this suit to have it declared that J's decree was a simple money-decree only, on the basis of which no process in execution could issue in respect of the property in dispute to oust the plaintiff's possession from any part of it.—*Gudri Lal v. Jagannath Ram*, I. L. R., 8 All. 117. [Feb. 1, 1886.]

Suits to be instituted where defendants reside or cause of action arose.

17. Subject to the limitations aforesaid, all other suits shall be instituted in a Court within the local limits of whose jurisdiction—

Extending to Provincial S. C. Courts.

(a) the cause of action arises, or

(b) all the defendants, at the time of the commencement of the suit, actually and voluntarily reside, or carry on business, or personally work for gain; or

(c) any of the defendants, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain: provided that either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

Explanation I.—Where a person has a permanent dwelling at one place, and also a lodging at another place for temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

Explanation II.—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations.

(a.) A is a tradesman in Calcutta. B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A, and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business.

(b.) A resides at Simla, B at Calcutta, and C at Delhi. A, B, and C being together at Benares, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benares, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in such of these cases, if the non-resident defendant objects, the suit cannot be maintained without the leave of the Court.

WHERE the cause of action occurs in the jurisdiction of a Court other than that in which the suit is brought, the plaintiff must, under the provision of s. 17, Act X. of 1877, show that the defendant, at the time of the commencement of the suit, actually and voluntarily resided or carried on business, or personally worked for gain, within the jurisdiction of the Court in which the suit was brought.—*Mudho Soodun Chowdhry v. Cochrane*, 6 C. L. R. 417. [Feb. 3, 1880.]

C AND L entered into an agreement at a place in the Sāran district, in which the latter resided and carried on business, whereby C promised to sell and deliver to L at a place in the Sāran district certain goods, and L promised to pay for such goods on delivery "by approved draft on Calcutta or Cawnpore (where C carried on business), payable thirty days after the receipt of the goods, or by Government currency notes." C delivered the goods according to his promise, but L did not pay for the same, and C, therefore, sued L for the price of the goods, suing him at Cawnpore. Held that the "cause of action," within the meaning of s. 17 of the Civil Procedure Code, was L's breach of his promise to pay for the goods; that the parties intended that payment should be made at Cawnpore, and the cause of action, therefore, arose there; and that, therefore, the suit had been properly instituted there.—*Llewellyn v. Churni Lal*, I. L. R., 4 All. 423. [May 16, 1882.]

WHERE a promissory note is executed in one district, and it is agreed that the amount of the note shall be paid in another, the Courts of the latter district have jurisdiction to entertain a suit on the note. The illustrations to s. 17 of the Code of Civil Procedure afford no safe guide as to what is meant in the Code by the term 'cause of action.' *Gopi Krishna Goswami v. Nil Komul Banerjee* (13 B. L. R. 451; 22 W. R. 79), *Mahomed Abdul Kadar v. E. I. Ry. Co.* (I. L. R., 1 Mad. 377), and *Vaughan v. Weldon* (L. R., 10 C. P. 48), approved.—*Laljee Lal v. Hardey Narain*, I. L. R., 9 Cal. 105. [June 1, 1882.]

THE expression "cause of action," as used in s. 17 of the Civil Procedure Code, does not mean whole cause of action, but includes material part of the cause of action. In a suit for compensation for breach of a contract, the making of the contract is a material part of the cause of action. Held, therefore, where a contract was made at O, and broken at A, that the Court at C had jurisdiction to try the suit for compensation for the breach of such contract. *Llewellyn v. Churni Lal* (I. L. R., 4 All. 423) and *Gopikrishna Goswami v. Nilkomul Banerjee* (13 B. L. R. 461) followed. *DeSouza v. Coles* (3 Mad. H. C. R. 384) and *Jumoonah Pershad v. Zaibunissa* (5 C. L. R. 268) dissented from.—*Bishunath v. Ilahi Bakhsh*, I. L. R., 5 All. 277. [Jan. 23, 1883.]

ON the 29th May 1873 one T drew from the hands of a shroff a sum of money which had been deposited by him in the name and to the credit of a third person. On the death of such third person his heirs sued the shroff to recover the sum deposited, and on the 30th January 1878 obtained a decree, in satisfaction of which the shroff paid the decretal money into Court on the 15th January 1883. On the 5th February 1884 the shroff sued T, the heirs of the third party, and another person (who owned to having received some of the money from T), to recover the sum he had been compelled to pay under the decree of 1878. Held that the plaintiff's cause of action arose at the time when he actually paid down the money of the 15th January 1883, and that the suit therefore was not barred by limitation.—*Torab Ali Khan v. Nilruttun Lal*, I. L. R., 13 Cal. 155. [May 15, 1886.]

S. 65 of 21 & 22 Vic., c. 100, does not constitute the Secretary of State a body corporate, but simply lays down that that officer and department are to be sued as a body corporate. A suit, therefore, brought against the Secretary of State is not one against any person or any real body corporate, but is one brought against a nominal defendant, such nominal defendant being put upon the record merely to enable the plaintiff to obtain the remedy secured to him by s. 65. The words "cause of action" in s. 12 of the Letters Patent, 1865, mean all those things necessary to give a right of action; and in a suit for breach of contract, where leave has not been obtained to sue under that section, it must be established that the contract as well as the breach have taken place within the local limits of the Court. The work carried on by the Government of India in governing the country, in salt, opium, &c., although carried on by Government officers in charge of the several departments of Government, is not, properly speaking, business carried on by Government, but work carried on for the benefit of the Indian Exchequer. The words of s. 12, "carry on business or personally work for gain," are, however, inapplicable to the Secretary of State for India in Council.—*Doya Narain Tewary v. Secretary of State for India in Council*, I. L. R., 14 Cal. 256. [Sep. 8, 1886.]

No action will lie against a witness for making a false statement in the course of a judicial proceeding.—*Chidambaram v. Thirumani*, I. L. R., 10 Mad. 87. [Nov. 12, 1886.]

18. In suits for compensation for wrong done to person or moveable property, if the wrong was done within the local limits of the jurisdiction of one Court, and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the plaintiff may, at his option, sue in either of the said Courts.

Extending to Provincial S. C. Courts.

Suits for compensation for wrongs to person or moveables.

Illustrations.

(a.) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.

(b.) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

(c.) A, travelling on the line of a Railway Company, whose principal office is at Howrah, is upset and injured at Allahabad by negligence imputable to the Company. He may sue the Company either at Howrah or at Allahabad.

19. If the suit be to obtain relief respecting, or compensation for wrong to, immoveable property situate within the limits of a single district, but within the jurisdiction of different Courts, the suit may be instituted in the Court within whose jurisdiction any portion of the property is situate; provided that, in respect of the value of the subject-matter of the suit, the entire claim be cognizable by such Court.

Ditto.

Suits for immoveable property situate in single district, but within jurisdiction of different Courts.

If the immoveable property be situate within the limits of different districts, the suit may be instituted in any Court, otherwise competent to try it, within whose jurisdiction any portion of the property is situate.

Suits for immoveable property situate in different districts.

UNDER Act X. of 1877, s. 19, it is not necessary to obtain the leave of the Court under cl. 12 of the Charter to sue in respect of immoveable property situate partly within and partly without the ordinary original civil jurisdiction of the High Court. *Nasir Singh v. Ram Lall Mookerjee*, I. L. R., 3 Cal. 370. [Feb. 18, 1878.]

A, THE mortgagee, under a bond, of properties situated in districts B and C, sued in the B Court on his bond, and obtained a decree for the mortgage-money and interest, with a declaration that the decree should be satisfied by sale of all the mortgage property. A had not obtained the permission of the High Court under s. 12, Act VIII. of 1859, which was necessary to enable him to proceed against the property in the C district. Having attached and sold all properties comprised in his decree situate within the jurisdiction of the B Court, A, under a certificate issued by such Court, obtained an order from the C Court attaching lands included in his decree situate in that district. D intervened, on the ground that he had purchased the same property in execution of another decree of the C Court against the same judgment-debtor, and the property was released from attachment. A then sued D and the mortgagee to enforce his mortgage-lien against the property in the C district. Held that the B Court had jurisdiction to give A a decree for the amount of the mortgage-money and interest, though it had not power to enforce the decree against the property in the C district; that the only effect of the decree was to change the nature of the original debt, which was a bond-debt, into a judgment-debt for the mortgage-money and interest; and that though A could not enforce his lien against the property in the C district under the decree of the B Court, yet as that property had been sold to a third person, D, he was at liberty to sue D to establish his lien for the mortgage-debt and interest.—*Bolakee Lall v. Thakoor Pertam Singh*, I. L. R., 5 Cal. 928. [May 14, 1880.]

A SUIT was instituted on a mortgage of a single revenue-paying estate in the Court of the Subordinate Judge of the district of Backergunge, under the provisions of s. 19, Act X. of 1877, and a decree was obtained for the sale of the mortgaged property. On an application for execution of the decree to the Court which passed it, held that the Court was competent to order a sale of the whole of the mortgaged property, though only a portion of it was situated in the district of Backergunge. *Kally Prosunno Bose v. Dinonath Mullik* (11 B. L. R. 56; 19 W. R. 434) followed and cited.—*Shurroop Chunder Gocho v. Amarnunnesa Khaton*, I. L. R., 8 Cal. 708. [Mar. 22, 1882.]

Extending to
Provincial S.
C. Courts, ex-
cept para. 4.

20. If a suit which may be instituted in more than one Court is instituted in a Court within the local limits of whose

Power to stay proceedings
where all defendants do not
reside within jurisdiction.

jurisdiction the defendant or all the defendants does not or do not actually and voluntarily reside, or carry on business, or personally work for gain, the defendant or any defendant may, after giving notice in writing to the other parties of his intention to apply to the Court to stay proceedings, apply to the Court accordingly ;

and if the Court, after hearing such of the parties as desire to be heard, is satisfied that justice is more likely to be done by the suit being instituted in some other Court, it may stay proceedings either finally or till further order, and make such order as it thinks fit as to the costs already incurred by the parties or any of them.

In such case, if the plaintiff so requires, the Court shall return the plaint with an endorsement thereon of the order staying proceedings.

Every such application shall be made at the earliest possible opportunity,

Application when to be made. and in all cases before the issues are settled ; and any defendant not so applying shall be deemed to have acquiesced in the institution of the suit.

A, who was employed by B and Co. as their agent at Calicut, instituted a suit for the balance of an account against his principals in the Court of the Subordinate Judge there in July 1878. In December of the same year B and Co. instituted the present suit against A for an account and for damages caused by his alleged negligence. *Held* that as in both suits practically the same issues were triable, A was entitled as having been first to institute his suit to proceed in the Court in which he had chosen to bring his suit, and to have the other suit stayed, but without prejudice to the right of the plaintiffs in the latter suit to institute a cross-claim in the Calicut Court.—*Meekjee Khetsee v. Kesowjee Devachund*, 4 C. L. R. 282. [April 7, 1879.]

In 1879 R gave J a bond containing a simple mortgage of immoveable property. Subsequently A and P jointly gave D a bond containing a simple mortgage of the same property. In 1881 D obtained a decree for the sale of the property under his mortgage, and it was put up for sale and purchased by the plaintiffs. In 1882 J obtained a decree in the Court of the Munsif of G (within the local limits of whose jurisdiction the property was not situated) for enforcement of his mortgage-bond by sale of the property. The plaintiffs objected to the sale, and, their objection having been disallowed, brought a suit for cancellation of J's decree, so far as it ordered the sale. *Held* that J's decree could only be regarded as a simple money-decree, because, as shown by s. 16 of the Civil Procedure Code, the Munsif had no power under the law to direct enforcement of hypothecation against immoveable property situate beyond the local limits of his jurisdiction, and neither the proviso to s. 16 nor s. 20 of the Code met the circumstances. *Held*, therefore, that the plaintiffs were entitled in this suit to have it declared that J's decree was a simple money-decree only, on the basis of which no process in execution could issue in respect of the property in dispute to oust the plaintiff's possession from any part of it.—*Gudri Lal v. Jagannath Ram*, 1. L. R., 8 All. 117. [Feb. 1, 1886.]

Extending to
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C. Courts.

21. Where the Court, under section 20, stays proceedings, and the

Remission of court-fee
where suit instituted in an-
other Court.

plaintiff re-institutes his suit in another Court, the plaint shall not be chargeable with any court-fee ; provided that the proper fee has been levied on the institution of the suit in the former Court, and that the plaint has been returned by such Court.

22. Where a suit may be instituted in more Courts than one, and such

Procedure where Courts in
which suit may be instituted
subordinate to same Appel-
late Court.

Courts are subordinate to the same Appellate Court, any defendant, after giving notice in writing to the other parties of his intention to apply to such Court to transfer the suit to another Court, may apply accordingly ; and the Appellate Court, after hearing the

other parties, if they desire to be heard, shall determine in which of the Courts having jurisdiction the suit shall proceed.

23. Where such Courts are subordinate to different Appellate Courts,

Procedure where they are but are subordinate to the same High Court, any not so subordinate. defendant, after giving notice in writing to the other parties of his intention to apply to the High Court to transfer the suit to another Court having jurisdiction, may apply accordingly. If the suit is brought in any Court subordinate to a District Court, the application, together with the objections (if any) filed by the other parties, shall be submitted through the District Court to which such Court is subordinate. The High Court may, after considering the objections (if any) of the other parties, determine in which of the Courts having jurisdiction the suit shall proceed.

THE fact that portion of the property, the whole of which is sued for in the Court of the Munsif of A, is of less value than the remaining portion, which is within the jurisdiction of the Munsif of B, is no sufficient ground for an application under the Code of Civil Procedure, s. 23, for a transfer to the latter Court. A party applying under s. 23, Act X. of 1877, must first of all give notice to the other side. The application should then be received by the Munsif and transmitted to the High Court through the District Court.—*Mussamat Purrunjote v. Deon Panday*, 2 C. L. R. 352. [May 2, 1878.]

S. 23 of Act XIV. of 1882 is only intended to provide for those cases where, on the ground of expense or convenience or some other good reason, the Court thinks that the place of trial ought to be changed. Parties desirous of obtaining the transfer of a case from one forum to another ought clearly to explain to the Court by petition and affidavit what is the nature of the claim and defence; they should further state what are the issues and the evidence required, and then satisfy the Court that, either on the ground of expense or convenience or otherwise, the place of trial ought to be changed.—*Khatija Bibi v. Taruk Chunder Dutt*, I. L. R., 9 Cal. 980. [July 23, 1885.]

24. Where such Courts are subordinate to different High Courts, any

Procedure where they are subordinate to different High Courts. defendant may, after giving notice in writing to the other parties of his intention to apply to the High Court within whose jurisdiction the Court in which the suit is brought is situate, apply accordingly.

If the suit is brought in any Court subordinate to a District Court, the application, together with the objection (if any) filed by the other parties, shall be submitted through the District Court to which such Court is subordinate;

and such High Court shall, after considering the objections (if any) of the other parties, determine in which of the several Courts having jurisdiction the suit shall proceed.

WHERE a person, being at the time a pauper, petitions, under the provisions of Act VIII. of 1859, for leave to sue as a pauper, but subsequently, pending an inquiry into his pauperism, obtains funds which enable him to pay the court-fees, and his petition is allowed upon such payment to be numbered and registered as a plaint, his suit shall be deemed to have been instituted from the date when he filed his pauper-petition, and limitation runs against him only up to that time. S. 13, Act VIII. of 1859, enacts that when a suit is brought for immoveable property situated within districts subject to different Sadr Courts, the Judge in whose Court the suit is brought shall apply to the Sadr Court to which he is subject for authority to proceed, and the Sadr Court to which the application is made, with the concurrence of the other Sadr Court within whose jurisdiction the property is partly situated, may give authority to proceed. But no power is expressly given in the section cited, or elsewhere in the Act, to direct the transfer of a suit brought in a Court subordinate to one Sadr Court to a Court subordinate to another Sadr Court. *Query*.—Whether Sadr Courts acting in concurrence have power to make such a transfer?—*Skinner Stuart v. Orde William*, I. L. R., 2 All. 241. [Mar. 21, 1879.]

S. 24 of the Civil Procedure Code does not empower a High Court to transfer a suit instituted within its own jurisdiction to the jurisdiction of another High Court, but only to declare in which Court a suit shall proceed, and, if necessary, to stay all further proceedings within its own jurisdiction. The defendants in a suit instituted at Mainpuri, who resided and carried on business at Surat, applied under s. 24 of the Civil Procedure Code that the suit might be tried at Surat, on the ground that it would be tried with greater convenience to them at that place. *Held* that, there being no balance in favour of either justice or convenience on the side of the Surat Court, the suit should proceed at Mainpuri.—*Tula Ram v. Harjiwan Das*, I. L. R., 5 All. 60. [July 21, 1882.]

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C. Courts.

25. The High Court or District Court may, on the application of any of the parties, after giving notice to the parties, and hearing such of them as desire to be heard, or of its own motion without giving such notice, withdraw any suit, whether pending in a Court of First Instance or in a Court of Appeal subordinate to such High Court or District Court, as the case may be, and try the suit itself, or transfer it for trial to any other such subordinate Court competent to try the same in respect of its nature, and the amount or value of its subject-matter.

For the purposes of this section, the Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

THE High Court cannot make an order of transfer of a case under s. 25 of the Code of Civil Procedure, unless the Court from which the transfer is sought to be made has jurisdiction to try it.—*Peary Lall Mozoomdar v. Komal Kishore Dassia*, I. L. R., 6 Cal. 30 [June 10, 1880]; *Govind Chunder Goswami v. Rugunmoney*, I. L. R., 6 Cal. 60 [Mar. 18, 1880].

Ss. 25 and 647 of the Civil Procedure Code (Act X. of 1877) are both applicable to Courts of Small Causes in the mufassal, and the former section is extended by the latter to execution-proceedings in such Courts. Under s. 25 of the Civil Procedure Code (Act X. of 1877), the District Judge has power to withdraw an application for execution of a decree from a subordinate Court (such as a Mufassal Court of Small Causes), and to dispose of it himself, or to transfer it to another subordinate Court competent to deal with it. The distinction made for the purposes of limitation between suits, appeals, and applications by the Limitation Acts, has no bearing upon a question of jurisdiction.—*Ta re Balaji Ranchoddas*, I. L. R., 5 Bom. 680. [Aug. 30, 1881.]

T, B, R, and W, the owners of a certain estate in equal shares, in 1863, entered into a partnership "for the cultivation of tea and other products" upon such estate. In 1864, H, E, and I, joined the firm. In 1870 H died; and in 1871 T purchased his share and those of E and I, and in 1873 of R. In 1875, T gave the Delhi and London Bank a mortgage on such estate as security for the repayment of money which he had borrowed from the Bank ostensibly for the purposes of the estate. The Bank obtained a decree against him personally for the money, in execution of which his rights and interests in the estate were put up for sale on the 20th June 1877, and were purchased by the Bank, which obtained possession of the estate in August 1877. In August 1879, B and W's executor sued T and the Bank, claiming a declaration that they were or had been partners with T in the estate; that if the partnership should be held to be subsisting, it might be dissolved, or that, if it had ceased to exist, the date of its termination might be fixed; and that in either event a liquidator might be appointed to take an account, and, after realizing assets, and discharging liabilities, might be ordered to pay them each one-third of such balance as remained. The suit was instituted in the Court of a District Judge. He transferred it to the Court of a Subordinate Judge. The High Court subsequently transferred it to its own file. *Held* that the suit was not one falling within the purview of s. 265 of the Contract Act; but, assuming that it was such a suit, and the Subordinate Judge had no jurisdiction, the High Court was nevertheless competent to transfer it. That the Bank, as T's representative by purchase, had been properly joined as a defendant in the suit. That the period of limitation applicable to the suit was that provided in No. 120, and not No. 106, Act XV. of 1877; but that in either case the suit was within time, as the partnership was dissolved, and consequently time began to run, not from the death of

H, or the purchases by T of his share, or those of E and I in 1871, or of R in 1873, but in August 1877, when the defendant Bank took possession of the partnership-property. That, as the effect of the purchases by T in 1871 and 1873 was to relieve the estates of H, E and I, and R of all part and future liabilities of the partnership, in respect of which B and W still continued as liable as T, and to which they would have to contribute to discharge, such purchases should be regarded and treated as made on behalf of the partnership, and therefore, at the time of the execution of the mortgage of the estate B, W and T were interested in the estate to the extent of one-third each. That, although T was not authorized, either actually or impliedly, by B and W to mortgage the estate, and the mortgage therefore was not binding on them, yet as they allowed him to conduct the business of the estate, in such a manner as to make it appear that the control and management of it rested with him, and he was, for all ordinary business-purposes, their representative, B and W were bound, in any accounting that might take place, to repay the defendant Bank for such advances as were made to T for the necessary purposes of the estate, in the same proportion as they must discharge debts due to other creditors. That T was entitled to be reimbursed such moneys of his own as he had expended within the legitimate scope and for the proper purposes of the partnership as originally contemplated by the parties. Directions to the liquidator appointed how to proceed.—*Harrison v. Delhi and London Bank*, I. L. R., 4 All. 437. [April 20, 1882.]

A DISTRICT COURT transferred for trial a suit instituted in a Court subordinate to it to another Court subordinate to it. The Court in which the suit was instituted was not the one in which the suit should have been instituted, and consequently the Court to which it was transferred made an order dismissing it, and directing the return of the plaint for presentation to the proper Court. Held that such order must be taken to have been passed under s. 57 of the Civil Procedure Code, and was therefore appealable under s. 588 (6); and that the defect of jurisdiction arising out of the institution of the suit in the wrong Court was not cured by the transfer of the suit.—*Pachaoni Awasthi v. Ilahi Bakhsh*, I. L. R., 4 All. 478. [May 30, 1882.]

A SUIT of the nature cognizable in a Court of Small Causes was instituted in the Court of a Subordinate Judge—the Judge of which, at the time of the institution of the suit, was personally invested with Small Cause Court jurisdiction. That Judge retired from office without trying the suit, and the District Judge directed his successor, who was not invested with Small Cause Court jurisdiction, to try it, and he did so. Held that it must be taken that the suit was transferred under s. 25 of the Civil Procedure Code to the Court of the Subordinate Judge; and that, therefore, regard being had to the provisions of that section, that the Court trying any suit withdrawn thereunder from a Court of Small Causes shall, for the purposes of such suit, be deemed a Court of Small Causes, no appeal would lie in the case to the District Judge.—*Kauleshar Rai v. Dost Muhammad Khan*, I. L. R., 5 All. 274. [Jan. 15, 1883.]

A SUIT for the infringement of certain inventions, instead of being instituted in the Court having, by virtue of s. 22 of Act XV. of 1859, jurisdiction to entertain it, was instituted in a Court subordinate to such Court not having such jurisdiction. The Court having jurisdiction to entertain such suit, at the joint request of the parties, transferred it for trial to itself under s. 25 of the Civil Procedure Code, and tried it. The plaintiff did not, as required by s. 34 of Act XV. of 1859, deliver with his plaint particulars of the breaches complained of in the suit. In this plaint, after describing his inventions, he alleged generally that the defendant had made and used them at a certain place without his license. Held that, inasmuch as the parties had assented to the transfer of the suit, and its transfer brought it into the right Court, the fact that the suit had been originally instituted in the wrong Court did not render the transfer illegal, and the Court having jurisdiction had properly tried the suit. Held also that, as required by s. 24 of Act XV. of 1859, the plaintiff should have delivered with his plaint particulars of the breaches complained of; that the general allegation as to infringement contained in the plaint did not amount to such particulars; and that, under these circumstances, the plaintiff came into Court with a case which could not be tried.—*Petman v. Bull*, I. L. R., 5 All. 371. [Feb. 23, 1883.]

AN order under s. 25 of the Civil Procedure Code, transferring a suit in which an appeal would lie from the decree made therein, is not subject to revision by the High Court under s. 622.—*Farid Ahmad v. Dulari Bibi*, I. L. R., 6 All. 238. [Feb. 19, 1884.]

AN officer who exercises executive and judicial functions, having himself dealt with a certain matter, and formed and expressed an opinion upon its merits in his executive capacity, and having further advised and directed litigation in support of this view, is, in consequence, disqualified from dealing as a Judge with this same question when it comes into Court, and has to be dealt with judicially.—*Loburi Domini v. Assam Railway and Trading Co.*, I. L. R., 10 Cal. 915. [June 11, 1884.]

Per Petheram, C.J., and Brodhurst, Mahmood, and Duthoit, JJ.—The object of ss. 19 and 20 of the Bengal Civil Courts Act, 1871, was to create in the District Judge, Subordinate Judge, and Munsif concurrent jurisdiction up to Rs. 1,000. *Per Petheram, C.J.*—S. 15 of the Civil Procedure Code is a proviso to those sections. The word “shall” in that section is imperative on the suitor. The word is used for the purpose of protecting the Courts. The suitor shall be obliged to bring his suit in the Court of the lowest grade competent to try it. The object of the Legislature is that the Court of the higher grade shall not be overcrowded with suits. Whenever an Act confers a benefit, the donee may exercise the same or not at his pleasure. The proviso is for the benefit of the Court of the higher grade, and it is not bound to take advantage of it. If it does not wish to try the suit, it may refuse to entertain it. If it wishes to retain the suit in its Court, it may do so; it is not bound to refuse to entertain it. *Per Duthoit, J.*—The words in s. 57 of the Civil Procedure Code, “shall be,” are an instruction which the Court is bound to follow; and they are therefore a restraint upon jurisdiction. The effect, therefore, of the concurrent jurisdiction of Subordinate Judges and Munsifs is not to allow to a Subordinate Judge discretion as to accepting or not accepting for trial by himself suits cognizable by the inferior tribunal. *Brodhurst and Mahmood, JJ.*—S. 15 of the Civil Procedure Code is a rule of procedure, not of jurisdiction; and whilst it lays down that a suit shall be instituted in the Court of the lowest grade, it does not oust the jurisdiction of the Courts of higher grades. *Russick Chunder Mohunt v. Ram Lal Saha* (22 W. R. 301), *Sircar v. Begum Bibi* (25 W. R. 219), followed. *Per Oldfield, J.*—S. 15 of the Civil Procedure Code is a provision entirely of procedure as distinct from jurisdiction, and its effect on s. 19 of the Bengal Civil Courts Act is that the jurisdiction of the District Judge and Subordinate Judge extends to all original suits cognizable by the Civil Court, subject in its exercise to a certain procedure, namely, that the suits be instituted in the Court of the lowest grade competent to try them. *Held*, therefore, by *Petheram, C.J., and Oldfield, Brodhurst, and Mahmood, JJ.*, where a Subordinate Judge had tried a suit which a Munsif, a Court of a lower grade, might have tried, that the Subordinate Judge had not acted without jurisdiction. The plaintiff in such suit had been in the first instance presented to the Munsif, who had returned it to be presented to the Subordinate Judge. *Per Duthoit, J.*—The decree of the Subordinate Judge would not be liable to be reversed in appeal for want of jurisdiction, for the jurisdiction was there, though it ought not to have been exercised. This view of the matter was consistent with the received canon of construction, that unless the Legislature uses negative words, or words showing an intention to treat the observance of a rule of procedure as essential, the rule will ordinarily be treated as a direction only. Under the circumstances, therefore, the District Judge had, in appeal, correctly refused to entertain the plea of defect in jurisdiction. *Per Mahmood, J.*—The institution of a suit in a Court of higher grade than the Court which is competent to try it is not a question either as to the jurisdiction or affecting the merits of the case. It is a question of the kind provided for by s. 578 of the Civil Procedure Code, and the irregularity is not one which affects “the merits of the case or the jurisdiction of the Court” within the meaning of the section. The plea of want of jurisdiction can be entertained for the first time at any stage of a suit, provided there is on the record sufficient material to substantiate it. —*Nidhi Lal v. Mazhar Husain*, I. L. R., 7 All. 230. [Dec. 13, 1884.]

AN order for the transfer of a suit from one Court to another, under s. 25 of the Code of Civil Procedure, cannot be made unless the suit has been brought in a Court having jurisdiction. The judgment in *Peary Lal Mozoomdar v. Komal Kishore Dassia* (I. L. R., 6 Cal. 30) entirely approved. When a suit has been tried by a Court having no jurisdiction over the matter, the parties cannot, by their mutual consent, convert the proceedings into a judicial process, although, when the merits have been submitted to a Court, it may result that, having themselves constituted it their arbiter, the parties may be bound by its decision. On the other hand, in a suit tried by a competent Court, the parties having, without objection, joined issue, and gone to trial upon the merits, cannot subsequently dispute the jurisdiction on the ground of irregularities in the initial procedure, which, if objected to at the time, would have led to the dismissal of the suit. A suit, having been instituted in a Court not of competent jurisdiction, was transferred, with the consent of parties, to a Court which was competent; but the defence of jurisdiction was set up before the issues were fixed, and was afterwards insisted on throughout. *Held* that in the single fact that the defendant had personally concurred in the transfer, there had been no waiver of the right to maintain in this defence, and that the suit must be dismissed on the ground that it was not competently brought. A Court of appeal, having set aside the whole of the proceedings including the plaint, directed that a new plaint be presented in the proper Court. *Held* that this order, equivalent to directing the plaintiff to institute a new suit, was wrong; and that, with only the alternative of having leave to

withdraw the suit and bring a new one, his suit should have been dismissed.—*Ledgard v. Bull*, I. L. R., 9 All. 191. [July 21, 1886.]

THERE is nothing in the Indian Companies Act (VI. of 1882), or the High Courts Act (24 and 25 Vic., c. 104), or the Letters Patent, which prevents the High Court from calling for the record of the proceedings in the winding up of a company under the Companies Act, and transferring those proceedings to its own file. Such a power is given to the High Court by s. 647 read with s. 25 of the Civil Procedure Code. Where, in the proceedings in the winding up of a company under Act VI. of 1882, an order was passed admitting the proof of a particular creditor of the company before any liquidator had been appointed, *held* that this was an irregularity which by itself would justify the High Court in sending for the record. Where the District Judge conducting the proceedings in the winding up of a company under Act VI. of 1882 had, after receiving notice of the admission by the High Court of a petition for transfer of those proceedings to its own file, drafted and placed upon the record an order which it might have been difficult for him to reconsider if the matter again came before him, and where the case appeared to be one in which serious questions of law were likely to arise which it would probably be difficult to discuss adequately in the District Court, in the absence of the authorities upon the subject and of any rules framed by the High Court for dealing with windings-up under the Act, and the case was of a kind which would probably come before the High Court in a variety of appeals from orders brought by one side or the other, *held* that, under these circumstances, the case was a proper one for the exercise of the High Court's jurisdiction by calling up the winding-up proceedings to its own file. A person who has been appointed liquidator of a company ought not, after such appointment, to continue to act as *vakil* of a creditor whose right to prove against the company is in dispute in the liquidation.—In the Matter of the West Hopetown Tea Company, Limited, I. L. R., 9 All. 180. [Dec. 1, 1886.]

CHAPTER III.

OF PARTIES, AND THEIR APPEARANCES, APPLICATIONS, AND ACTS.

26. All persons may be joined as plaintiffs in whom the right to

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Persons who may be joined any relief claimed is alleged to exist, whether as plaintiffs. jointly, severally, or in the alternative, in respect of the same cause of action. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment.

But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who is not found entitled to relief, unless the Court, in disposing of the costs of the suit, otherwise directs.

By the memorandum and Articles of Association of the new Dhurumsey Poonjaboy Spinning and Weaving Company, the plaintiffs' firm of M F and Co. were appointed agents of the Company for twenty-five years, and it was provided that they should have the general control and management of the Company. Cl. 98 of the Articles provided that the said firm, as such agents, should have full power and authority (*inter alia*) to appoint and to employ, in or for the purposes of the transaction and management of the affairs and business of the Company, such solicitors as they should think proper. An agreement, dated 26th August 1874, was also entered into between the Company and the partners in the firm of M F and Co., their executors, administrators, and assigns, for the time being constituting the partnership firm of M F and Co., whereby it was agreed that the said firm should be agents to the Company for twenty-five years to buy and sell, &c., and particularly to exercise all the powers contained in cl. 98 of the Articles of Association. Messrs. C and B were duly appointed solicitors to the Company, and acted as such for a considerable time. Merwanji Framji, one of the members of the said firm of M F and Co., died in the middle of March 1876. The plaintiffs complained that G, one of the shareholders in the Company, became desirous of ousting the plaintiffs from the position of agents of the Company, and of becoming the managing director of the Company; that, in July 1881, he procured his own election, and that of certain nominees of his, as directors of the Company; and, on the 8th August 1881, procured the passing of a resolution at a Board-meeting to the effect that as Messrs. C and B, the Company's solicitors, were also the solicitors of the agents, it was desirable, for the interests of the

Company, that a change should be made, and that Messrs. H, C, and L, be appointed solicitors of the Company. (The plaintiffs alleged that the only object of passing the said resolution was to facilitate the design of G, of ousting the plaintiffs from their agency, and getting the management of the Company for himself; that Messrs. H, C, and L, had been for a long time the solicitors of G, and had been advising him in his designs upon the Company and upon the plaintiffs, and they contended that the resolution was a breach of the contract between the Company and the plaintiffs, and a violation of the Articles of Association of the Company. The plaintiffs sued G and two other directors of the Company, and the Company itself, and prayed for an injunction against the defendants to restrain them from committing any breach of the agreement of 26th August 1874, and in particular from carrying into effect the resolution appointing Messrs. H, C, and L as solicitors for the Company, and to restrain them from doing any thing inconsistent with the memorandum and Articles of Association. The defendants contended that the contract of the 26th August 1874 had been determined by the death of Merwánji Frámji, and that the powers conferred on the agents by cl. 98 of the Articles were, subject to the general powers of management, vested in the directors by the Articles, and that the case was not one in which an injunction could be granted. *Held* that, having regard to the memorandum and Articles of Association, the contract was that the firm of M F and Co. for the time being should be the agents of the Company for twenty-five years, and that the right to sue on the contract by its nature survived to the plaintiffs after the death of Merwánji Frámji. *Held* also that there being no provision either in the Articles of Association or the agreement of 26th August 1874, that the power thereby conferred on the agents should be subject to the control or assent of the directors, there was no right in the directors to interfere with the agents in the exercise of their powers otherwise than as representing the Company in virtue of their general powers of management. It being admitted that the conduct of the defendants would be supported by the Company in general meeting owing to their having a preponderance of votes, *held* that, inasmuch as the Court would not, by a decree for specific performance or by injunction, compel the Company to retain the plaintiffs in the confidential position of agents, it would not restrain the defendants or the Company from appointing a solicitor, which was only a violation of what was ancillary or incidental to the principal part of the contract, *viz.*, the agreement that the plaintiffs should be the agents of the Company for twenty-five years; and, further, *semble* that on the merits of the case the Court would not interfere on behalf of the plaintiffs. Counsel on behalf of the plaintiffs sought to obtain the injunction on the ground that the resolution of the 8th August 1881, appointing Messrs. H, C, and L solicitors of the Company, was contrary to the memorandum of Association, and therefore, *ultra vires*; and, in order that this point might be pressed against the defendants, it was proposed that the plaint should be amended by alleging a cause of action in two of the plaintiffs as shareholders, as well as a cause of action in all the plaintiffs as parties contracting with the Company. *Held* that, under the provisions of ss. 26 and 31 of the Civil Procedure Code (Act X. of 1877), the amendment could not be allowed. The plaintiffs, as shareholders and contractors, had not the same cause of action, by which words were meant not only the act complained of, but also the right violated by that act. The rights of the plaintiffs as contractors, alleged to be violated by the resolution, were rights given to them by their agreement; but the rights of the plaintiffs as shareholders were rights secured to them by the Articles of Association. —Nusserwánji Merwánji Pánday v. Gordon, I. L. R., 6 Bom. 266. [Sep. 30, 1881.]

No member of an undivided Hindu family, except the manager of the family as such, is entitled to bring a suit to establish a right belonging to the family without making the other members of the family parties to the suit.—Arunáchala v. Vythialinga, I. L. R., 6 Mad. 27. [Sep. 4, 1882.]

S. 26 of the Code of Civil Procedure does not authorize the joinder of plaintiffs with antagonistic claims arising out of distinct causes of action. Where one of two widows of a deceased Hindu and her adopted son sued as co-plaintiffs, claiming in the alternative either to recover the whole family-estate for the latter, if the adoption was valid, or, if the adoption was invalid, one-half of the estate for the former, *held* that the suit was bad for misjoinder. *Held* also that when such misjoinder had been allowed, and the suit decided, and an appeal brought, the Court of Appeal should dispose of the suit in the mode in which the lower Court ought to have disposed of it by returning the plaint for amendment. Farzand Ali v. Yusuf Ali (I. L. R., 2 All. 669) dissented from.—Lingammál v. Venkatammál, I. L. R., 6 Mad. 239. [Dec. 22, 1882.]

CERTAIN properties were sold to A by private contract. Subsequently the properties were attached in execution of a decree against A's vendors, and sold in execution to various purchasers. A instituted a suit against his vendors, the decree-holders, and the purchasers, to set aside the execution-sale. *Held* that the suit was not defective by reason

of misjoinder of parties. *Rajaram Tewari v. Luchman Prasad* (B. L. R., Sup. Vol., 731; S.C., 8 W. B. 18) distinguished.—*Haranund Mozoomdar v. Prosunno Chunder Biswas*, I. L. R., 9 Cal. 763. [Mar. 30, 1883.]

SUIT by six plaintiffs praying for a declaration that certain proceedings of a District Temple Committee removing them from office as trustees of a temple were illegal. Defendants pleaded that the suit would not lie because of misjoinder, and also because further relief might have been sought. *Held* that, under s. 26 of the Code of Civil Procedure, the plaintiffs could not sue jointly, and that the plaint should be returned for amendment, one of the plaintiffs to be allowed to use it as his own. *Held* also that, unless there had been an actual ouster from office, a declaratory suit would lie.—*Ramanuja v. Devanayaka*, I. L. R., 8 Mad. 361. [Feb. 24, 1885.]

THIRTEEN persons, who had been committed to jail under one warrant and for the same offence, jointly sued the Superintendent of the Presidency Jail for their wrongful detention in jail after the term of imprisonment to which they had been sentenced had expired, claiming Rs. 2,600 as damages. The defendant applied to have the plaint taken off the file on the ground that the plaintiffs had improperly joined in one suit several distinct and separate causes of action belonging to them as separate individuals. *Held* that the plaint must be taken off the file.—*Ali Serang v. Beadon*, I. L. R., 11 Cal. 524. [April 16, 1885.]

UNLESS there is a special provision of the law, co-owners are not permitted to sue through some or one of their members, but all co-owners must join in a suit to recover their property. The defendant cannot be deprived of his right to insist on the other co-owners being joined on the record, by the fact that they approve of the suit being brought by the plaintiff alone.—*Balkrishna Moreshwar Kunte v. Municipality of Mahad*, I. L. R., 10 Bom. 32. [May 4, 1885.]

27. Where a suit has been instituted in the name of the wrong person as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may, if satisfied that the suit has been so commenced through a *bond fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted or added as plaintiff or plaintiffs upon such terms as the Court think just. Extending to Provincial S. C. Courts.

28. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative, in respect of the same matter. Ditto.

And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

READING ss. 28, 29, and 32 of Act X. of 1877 together, that where an application is made under s. 32 for the addition of a person, whether as plaintiff or defendant, such person should, as a general rule, be added only where there are questions directly arising out of and incidental to the original causes of action, in which such person has an identity or community of interest with the original plaintiff or defendant.—*Naraini Kuar v. Durjan Kuar*; *Naraini Kuar v. Piarey Lal*, I. L. R., 2 All. 738. [Feb. 2, 1880.]

A STRANGER to a contract of which specific performance is sought cannot be a party to the suit. Where, therefore, the plaintiff sued as against one defendant for specific performance of a contract to sell land, and as against another for a declaration that he was not entitled to any charge upon the said lands, *held* that the latter defendant was improperly made a party to the suit.—*Luckumsey Ookerda v. Fazulla Cassumbhoy*, I. L. R., 5 Bom. 177. [Dec. 20, 1880.]

THE creditor of an insolvent, who had assigned all his property to trustees for the benefit of all his creditors generally, sued him for his debt, joining the trustees as defendants, on the ground that they had refused to register his claim. The trustees had refused to register the claim on the ground that the plaintiff had not applied for its registration within the time notified by them, and that he would not consent to abide by the order which the High Court might make on an application by the trustees for its advice regard-

ing the claims of creditors who, like the plaintiff, had applied for the registration of their claims after such time, but before the assets of the insolvent had been distributed. The deed of trust empowered the trustees to distribute the assets of the insolvent after a certain time among the creditors who had preferred their claims within that time, and declared that they should not be liable for such distribution to creditors who had not preferred their claims within that time; but it did not empower them to refuse to register claims made after that time, but before distribution of the assets. *Held* that the trustees had been properly joined as defendants in such suit; that their refusal to register the plaintiff's claim gave him a cause of action against them; and that, inasmuch as the plaintiff had applied for the registration of his claim before the distribution of the assets, the trustees had improperly refused to register it.—*Ajudhia Nath v. Anant Das*, I. L. R., 3 All. 709. [May 11, 1881.]

Per FIELD, J.—Where a person, sued for rent, sets up the title of a third party, and alleges that he holds under, and pays rent to, him, such third party ought not to be made a party to the suit so as to convert a simple suit for arrears of rent into one for the determination of the title to the property in respect of which the rent is claimed. Such a suit raises only two issues; *viz.*: (1) does the relation of landlord and tenant exist between the plaintiff and defendant? (2) are the alleged arrears of rent due and unpaid? and these are questions in which the plaintiff and defendant are alone concerned, and no third party claiming a title adverse to the plaintiff can properly be made a party to the trial of these issues. S. 28 of the Civil Procedure Code is not imperative, but allows a discretion to be exercised; and in such a suit it is better, both in the interests of Government and for the proper adjudication of the question of the title, that it should be tried by a competent Court in a suit directly framed and brought for that purpose.—*Lodai Mollah v. Kally Dass Roy*, I. L. R., 8 Cal. 238. [July 29, 1881.]

A, B, C, and D, were the proprietors of a 2a. 13g. share in mauza E, and also of a 2a. 13g. share in a mauza F, both in the district of Bhāgalpur. On the 19th September 1872, A, B, C, and D, mortgaged their share in E and F, together with property in the district of Tīrhāt, to the plaintiff. On the 24th March 1873, A mortgaged his share in E and F to J. On the 13th November 1872, A and B mortgaged their shares in E to K. On the 25th March 1874, J obtained a decree on his mortgage, and the interests of A and B were purchased on the 5th January 1875 by L. On the 17th April 1874, M, to whom the first mortgage had been assigned, obtained a decree, and attached the property mortgaged. L objected that he had already purchased the interests of A, and on the objection being allowed, M instituted a suit against L for a declaration of priority, and obtained a decree on the 9th August 1876. In execution of this decree the property first mortgaged was sold on the 4th March 1878, and, after satisfying the mortgage, a surplus of Rs. 7,664 remained. After the institution of the first suit, and before L's purchase, the plaintiff instituted a suit upon his mortgage in the Tīrhāt Court without having obtained leave to include that portion of the mortgaged property situate in the Bhāgalpur district. On the 17th July 1874, a decree was made in this suit. On the 17th January 1877, K obtained a decree on his mortgage, and shares of A and B in E were sold, and purchased on the 3rd September 1877 by N. The plaintiff had his decree transferred for execution to the Bhāgalpur Court, and he attached the surplus sale-proceeds and a 1a. 9g. share in E. This attachment was withdrawn on the objection of L, who drew out the surplus sale-proceeds. The share purchased by N was also released from attachment. The plaintiff now sued L, N, and the mortgagors for a declaration that his decree of the 17th July 1874 affected the E property, to recover the surplus sale-proceeds from L and in case the decree should not be valid to the extent mentioned, for a decree declaring his prior lien on the property in E. It was contended for the defendants that the Tīrhāt Court had no jurisdiction in respect of the Bhāgalpur property; that the suit was bad for multifariousness; that certain persons, co-sharers with the plaintiff, should have been made parties; and that the cause of action had been split. *Held* that the Tīrhāt Court had no jurisdiction in respect of the Bhāgalpur property; that the suit was not bad by reason of multifariousness; and that it was not necessary to make the plaintiff's co-sharers parties, as he might be regarded as contracting on behalf of himself and the other members of the family as undisclosed principals. *Held* also that the cause of action had been split.—*Bungsee Singh v. Soodist Lal*, I. L. R., 7 Cal. 739. [Aug. 5, 1881.]

THE plaintiffs brought a suit to recover certain sums of money from the defendants, due to them under certain contracts which they alleged had been entered into by themselves, and one A D, as agent of the defendants, and asked for an account. The defendants, in their written statement, contended that there was no privity of contract between themselves and the plaintiffs, and denied the alleged agency of A D. The plaintiffs, before the hearing, applied to the Court to have A D added as a party-defendant under ss. 28 and 32 of Act X. of 1877, asking to be allowed to amend their plaint so as to pray for relief

in the alternative against the original defendants or the said A D, or both against the original defendants and the said A D. *Held* that, under s. 28, they were entitled to the order on the authority of the case of *Child v. Stenning* (L. R. 5 Ch. D. 695).—*Buddree Doss v. Hoare, Miller, & Co.*, 1 L. R., 8 Cal. 170. [Dec. 15, 1881.]

DEFENDANT No. 1, the tenant of certain land at fixed rates, on the 12th November 1877, sold his interest in the land to the plaintiff. At the time of the sale the land was in the actual possession of defendant No. 2, defendant No. 1's sub-tenant, against whom, however, defendant No. 1 had obtained an order for ejectment on the 25th June preceding. On the 25th March 1878, defendant No. 1 applied a second time for the ejectment of defendant No. 2, and while this matter was pending the plaintiff endeavoured to obtain possession of the land, but was resisted by defendant No. 2. He thereupon instituted a charge of criminal trespass against the latter. This criminal proceeding was pending when, on the 14th September 1878, defendant No. 1 obtained a second order for defendant No. 2's ejectment. Under this order he obtained possession of the land, and also of the crop planted by defendant No. 2, which he sold to defendant No. 3 on the 22nd September 1878. On the 25th of the same month the plaintiff's charge of criminal trespass against defendant No. 2 was dismissed, on the ground that defendant No. 1 was in possession, and the plaintiff had never obtained possession under his purchase. Defendant No. 1 subsequently let the land to defendant No. 4. The plaintiff, alleging that three causes of action had accrued to him—*viz.* (i.) on the 12th November 1877, the date of the sale to him—(ii.) on the 30th March 1878, when defendant No. 1 applied a second time for the ejectment of defendant No. 2—and (iii.) on the 22nd September 1878, when defendant No. 1 took possession of the land—sued defendants Nos. 1, 2, 3, and 4, claiming (i.) possession of the land as against them all; (ii.) mesne-profits by way of damages for the year 1285 Fasli (September 1877—September 1878), as against defendants Nos. 1 and 2; (iii.) mesne-profits by way of damages for 1286 Fasli (September 1878—September 1879), against defendants Nos. 1 and 3; and (iv.) mesne-profits by way of damages for 1287 Fasli (September 1879—September 1880), against defendants Nos. 1 and 4. *Held* by the Full Bench (Mahmood, J., dissenting) that the Court of first instance had properly rejected the plaint, the suit being open to the objection that different causes of action against different defendants separately had been joined, for which procedure no sanction was to be found in the Code of Civil Procedure.—*Narsingh Das v. Mangal Dubey*, 1 L. R., 5 All. 163. [Aug. 26, 1882.]

THE plaintiffs having obtained a decree for the possession of certain lands, and having received formal possession thereof, brought a suit against 86 persons holding distinct and separate tenures in those lands, on the allegations that, “on the plaintiffs attempting to measure the lands, and calling on the tenants to pay rent, ten of the defendants, described as *prodhans* or headmen, formed a combination, and gained over the other defendants with a view to injure the plaintiffs; that through their help and endeavour the remaining defendants failed to recognize the plaintiffs as landlords, and declined to pay any rent, or to allow them to measure the lands, driving away an amin who went to measure the lands on behalf of the plaintiffs, and thereby preventing the plaintiffs from exercising their proprietary rights; that the plaintiffs brought suits for rent against some of the defendants, and in those suits the defendants denied the plaintiffs' title as landlords, whereupon the plaintiffs, seeing the necessity of instituting a suit for declaring the defendants' tenants of the land, withdrew the suits for rent.” They stated their cause of action to “be the defendants' act of not recognizing us as their landlords, and thereby preventing us exercising our proprietary rights in respect of the land in suit, and not allowing us to make a measurement of that land, and also withholding the payment of rent;” and prayed for a decree establishing their proprietary right, and declaring the defendants to be their tenants. *Held* that there was but one and the same cause of action against all the defendants, *viz.*, a combination to keep the plaintiffs out of the enjoyment of the property they had purchased; and that the suit was not multifarious within s. 28 of the Civil Procedure Code. *Held* also that the declaratory decree prayed for could be made notwithstanding the plaintiffs might have asked for possession of the lands.—*Loke Noth Surma v. Keshab Ram Doss*, 1 L. R., 13 Cal. 147. [April 19, 1886.]

29. The plaintiff may, at his option, join as parties to the same suit all

Joinder of parties liable on or any of the persons severally, or jointly and
same contract. severally, liable on any one contract, including
parties to bills of exchange, hundis, and promissory notes.

Extending to
Provincial S.
C. Courts.

THE drawer and acceptor of bills of exchange can be joined as co-defendants in a suit brought by the holder of such bills.—*Pestonjee Eduljee Gurdur v. Mirza Mahomed Ally*, 1 L. R., 3 Cal. 541. [April 8, 1878.]

READING ss. 28, 29, and 32 of Act X. of 1877 together, that where an application is made under s. 32 for the addition of a person, whether as plaintiff or defendant, such person should, as a general rule, be added only where there are questions directly arising out of and incidental to the original causes of action, in which such person has an identity or community of interest with the original plaintiff or defendant.—*Naraini Kuar v. Durjan Kuar*; *Naraini Kuar v. Piarey Lall*, I. L. R., 2 All. 738. [Feb. 2, 1880.]

ending to
vincial S.
Courts.

30. Where there are numerous parties having the same interest in one suit, one or more of such parties may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of all parties so interested. But the Court shall in such cases give, at the plaintiff's expense, notice of the institution of the suit to all such parties either by personal service or (if from the number of parties or any other cause such service is not reasonably practicable) by public advertisement, as the Court in each case may direct.

A DECREE against a karnavan of a Malabar tarwad, as such, is binding upon the members of that tarwad, though not parties to the suit,* in the absence of fraud or collusion. A karnavan is not a mere trustee, nor do the rules of Courts of Equity as to the necessity of making *cestui que trusts* parties to suits against trustees by strangers apply to the case of a karnavan and the members of the tarwad. Expl. 5 of s. 13, Civil Procedure Code, is not limited to the case of a suit under s. 30. The members of a tarwad claim under a karnavan, suing as such, within the meaning of expl. 5 of s. 13. Status of karnavan discussed.—*Varanakot Narayanan Namburi v. Varanakot Narayanan Namburi*, I. L. R., 2 Mad. 328. [Sep. 30, 1880.]

If it is sought to make a decree in a suit binding on a Malabar tarwad, the procedure laid down in s. 30 should be followed if the members are numerous.—*Elayachanidathil Kombi Achen v. Kenatunkora Lakshmi Amma*, I. L. R., 5 Mad. 201. [Mar. 8, 1881.]

An order under s. 14, Act XX. of 1863, should be mandatory, and not prohibitory. Where a sacred book was kept at a temple, and was an object of veneration to the members of the sect entitled to worship there, *held* that a suit would lie under s. 14 of Act XX. of 1863, by some of the persons interested in the temple, to restrain the superintendent from removing the book to another place, and that he should be directed to retain it as a portion of the furniture of the temple.—*Dhurrum Singh v. Kissen Singh*, I. L. R., 7 Cal. 767. [July 14, 1881.]

In a suit by two of the worshippers at a certain mosque, instituted after having obtained the sanction of the Advocate-General under s. 539 of the Civil Procedure Code, against the mutawalli of the mosque, and two other persons to whom the mutawalli had mortgaged part of the endowed property to secure the repayment of a loan, it appeared that one of the mortgagees had sold some of the *wugf* property in execution of a decree which he had obtained upon his mortgage, and the property had been purchased by the other mortgagee. The plaintiffs prayed that the property purchased might be declared to be *wugf*; that the sale in execution might be declared to be invalid; that a mutawalli might be appointed by the Court; and that the costs of doing the acts of the *wugf* might be defrayed from the profits of the property belonging to the endowment. *Held* that, so far as regarded that portion of the prayer which fell within the provisions of s. 539 of the Code, the plaintiffs were not entitled to sue, as they were not "persons having a direct interest in the trust" within the meaning of the section, and that the suit should have been instituted under s. 14 of Act XX. of 1863 after sanction obtained under s. 18. *Held* also that, though the plaintiffs might possibly have obtained leave to sue under s. 30 of the Code on behalf of themselves and the other persons attending the mosque, they, not having obtained such leave, were not entitled to institute the suit for the purpose of obtaining the relief asked for in the other prayers of the plaint. The words, "trustee, manager, or superintendent of a mosque," &c., mentioned in Act XX. of 1863, mean the trustee, manager, or superintendent of a mosque, &c., to which the provisions of the Act are applicable, not the trustee, &c., of any mosque. And such persons are those to whom the provisions of Reg. XIX. of 1810 were applicable. The mosques, &c., to which the provisions of that Regulation were applicable, were mosques for the support of which endowments had been granted in land by the Government of the country or by individuals, and the mosques, &c., to which the provisions of Act XX. of 1863 apply, are not any mosques, &c., but any mosque for the support of which endowments in land have been made by the Government or private individuals.—*Jan. Ali v. Ram Nath Mundul*, I. L. R., 8 Cal. 32. [Aug. 12, 1881.]

A SUBORDINATE Judge having permitted the junior widow of a Hindu to be made a party to the proceedings in execution of a decree obtained by the senior widow against a debtor of their deceased husband, the High Court declined to interfere under s. 622 of the Code of Civil Procedure. *Quære*.—Whether s. 32 of the Code of Civil Procedure does not give a Court discretionary power to add parties after adjudication of the question raised in the suit?—*Lingammál v. Venkatammál*, I. L. R., 6 Mad. 227. [Jan. 5, 1883.]

A SUIT by one or more creditors on behalf of other creditors cannot be entertained without the leave of the Court being obtained for its institution. Such leave cannot be granted at the hearing.—*Oriental Bank Corporation v. Gobind Lall Seal*, I. L. R., 9 Cal. 604. [Feb. 20, 1883.]

A SHAREHOLDER of an undivided piece of land sued three of his co-sharers, *vs.* he alleged, had trespassed on the land by building thereon, for restoration of the land to its original condition. The Court of first instance tried and determined the suit as brought and framed. The lower Appellate Court dismissed the suit on the ground that, there being many co-sharers, the plaintiff could not alone sue, and, under s. 30 of the Civil Procedure Code, the suit was bad. *Per* Stuart, C.J.—That the lower Appellate Court was right in holding that s. 30 of the Civil Procedure Code applied to the case, but that it was not right in dismissing the suit, but should have remanded it for the procedure provided by that section. Also that the permission mentioned in s. 30 is express, and not constructive. *Per* Brodthurst, J.—That s. 30 was not applicable to the case, that section contemplating a case in which there are numerous parties, having the same interest in a suit, who are all before the Court, and all anxious to have the matter in dispute disposed of, but, in order to save trouble and expense, are desirous that one or more of them shall sue or defend on behalf of all in the same interest. *Per* Straight and Tyrrell, JJ.—That s. 30 was not applicable to the case, the first part of that section implying that the plaintiff therein contemplated wishes to sue on behalf of other persons similarly interested in suing, they also wishing the same.—*Hira Lal v. Bhairon*, I. L. R., 5 All. 602. [June 1, 1883.]

FOUR persons of the Chitpávan caste brought a suit in 1876, alleging that they and the members of their caste in common with certain other castes possessed the exclusive right of entry and worship in the sanctuary of a temple, and that the defendants, members of the Palshe caste, not being of the privileged castes, infringed that right in 1871 and thereafter by entering the sanctuary and performing worship therein. They prayed for a declaration of their right and an injunction restraining the defendants from interfering with it. *Held* that the plaintiffs could maintain the suit for the personal injury alleged to have been suffered by themselves by the pollution of their sanctuary, whether under the Civil Procedure Code of 1859 or that of 1877, s. 30 of the latter being merely regulative, not constitutive. Whether or not it could be contended that they and the defendants so represented their respective castes that the decree in this suit should bind all members of the two castes, would be open to argument in any future case; but it might well be consistent with general principles to hold that certain judicial proceedings taken by or against a select number as representing a large class might, if fairly and honestly conducted, bind or benefit the whole class.—*Anandráv Bhikáji v. Shankar Dáji*, I. L. R., 7 Bom. 323. [June 13, 1883.]

A LANDLORD having obtained a decree against the karnavan and senior anandravans of a Malabar tarwad, for the recovery of certain lands demised on perpetual lease to the tarwad, on the ground that the tenure was forfeited by the denial of the landlord's title by the karnavan, the junior members of the tarwad sued the parties to that decree to set aside the decree and also the forfeiture of the tenure, on the ground that the karnavan had acted improperly in denying the title of the landlord. It was found that the karnavan acted *bona fide* in denying his landlord's title and in defending the suit. *Held* that the plaintiffs could not succeed.—*Gopalan v. Valia Tamburatti*, I. L. R., 7 Mad. 87. [July 24, 1883.]

THE "Majlis Islamia" or "Muhammadian Association" of Meerut instituted a suit in its own name by its secretary. *Held* that, as such Association had not, *per se*, any status in law so to sue, the suit was not maintainable. *Seemle* that, had such Association empowered one or more of its number to act for it in the matter of the suit in the manner provided by s. 30 of the Civil Procedure Code, the permission mentioned in that section might have been granted.—*Muhammadian Association of Meerut v. Bakhshi Ram*, I. L. R., 6 All. 284. [Mar. 25, 1884.]

THE plaintiff sued to recover possession as *mutwali* of certain parcels of land, alleging that they were dedicated as *waqf*, and that the profits were "applied to the feeding of wayfarers and travellers, to lighting the mosque and shrine in the evening, and to meeting the expenses of repeating prayers on the occasion of *Id* and *Bakhríd*, and that the said

profits were never spent for personal purposes." The plaintiff based her right to sue upon the fact that her deceased husband had been *mutwali*, and she prayed that the property in suit might be declared *waqf*; and that certain alienations made by her step-son since her husband's death might be set aside. *Held* that the trust to which the suit related was one partly for charitable and partly for religious purposes. As far as it related to the former, it was governed by s. 539 of the Civil Procedure Code, and if viewed in the light of the latter, by Act XX. of 1863; and that the suit, not being properly framed in compliance with the provisions of either of those enactments, was not maintainable. *Held*, further, that even supposing the endowment alleged was neither a public charity within the meaning of s. 539 of the Civil Procedure Code, nor a religious endowment to which Act XX. of 1863 applied, the plaintiff was not entitled to sue alone, as it was clear upon the face of the plaint that she was not alone interested in the subject-matter of the suit, and therefore that she could only sue on behalf of all who were so interested, having first obtained the leave of the Court, and otherwise complied with the provisions of s. 30 of the Civil Procedure Code.—*Lutifunissa Bibi v. Nazirun Bibi*, I. L. R., 11 Cal. 33. [Aug. 29, 1884.]

A LEGATEE cannot sue on behalf of himself and other legatees without an order of the Court obtained under s. 30 of the Civil Procedure Code enabling him so to sue. Where a legatee, a minor, sued in that form by her next friend without such an order, the next friend was held liable for costs on his adducing no evidence to show that the suit was for the benefit of the minor.—*Geerobulla Dabee v. Chunder Kant Mookerjee*, I. L. R., 11 Cal. 213. [Mar. 10, 1885.]

THE rule of English Law that no action can be maintained by one person against another for obstruction to a highway without proof of special damage should be enforced in British India as a rule of "equity and good conscience." S. 30 of the Code of Civil Procedure was not intended to allow individuals to sue on behalf of the general public, but to enable some of a class having special interests to represent the rest of the class.—*Adamson v. Arumugam*, I. L. R., 9 Mad. 168. [July 12, 1886.]

A DECREE having been obtained against the karnavan and senior anandravan of a Malabar tarwad, whereby the tarwad was dispossessed of certain land, the junior members of the tarwad, who had not been impleaded in the suit, sued to recover the land. *Held* that the plaintiffs were entitled to recover upon proof that the decree in the former suit was not substantially correct, and that they were not bound to prove *mala fides* on the part of their karnavan in defending the former suit as a condition precedent to recovery.—*Sridevi v. Kellu Eradi*, I. L. R., 10 Mad. 79. [Oct. 12, 1886.]

In 1849, the Board of Revenue, acting under Reg. XIX. of 1810, interfered in the management of the affairs of a temple. In a suit relating to the affairs of the temple instituted in 1878, it did not appear whether any transfer of property had been made under s. 4 of Act XX. of 1863, but it did appear that, in 1865, the Judge of Patna had appointed a manager of the temple. *Held* that the right of the Government officers to control the affairs of the temple had been sufficiently proved. S. 14 of Act XX. of 1863 is generally applicable to all religious endowments, and while it, in one sense, restrains the ordinary Courts from dealing with cases against trustees of religious endowments, it gives special facilities for suits in the principal Civil Courts of the district by any of the persons interested in these endowments. *Quere*.—Whether, considering the provisions of s. 30 of the Civil Procedure Code, the retention of s. 14 of Act XX. of 1863 is at all necessary?

Extending to
Provincial S.
C. Courts.

31. No suit shall be defeated by reason of the misjoinder of parties, and the Court may, in every suit, deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Nothing in this section shall be deemed to enable plaintiffs to join in respect of distinct causes of action.

In a suit instituted against six different parties, plaintiff prayed for *khâs* possession of a four-anna share in a certain lot, or, in the alternative, for a decree for arrears of rent against the defendants, or such of the defendants as should, on inquiry, appear to be respectively liable. It appeared that plaintiff had been kept out of possession by one only of the six defendants, and that, if he was entitled to a decree for arrears of rent, another of the defendants was liable for a portion only of such arrears. *Held* (with reference to Act X. of 1877, ss. 31 and 45) that the suit was not improperly framed; that there was no objection to the prayer for alternative relief; and that the suit should not have been dismissed for joinder of causes of action.—*Janakinath Mookerjee v. Ramrunjun Chuckerbutty*, I. L. R., 4 Cal. 949. [Jan. 17, 1879.]

Two of the sons of a joint Mitakshara family, consisting of the father, three sons, and the widow and sons of a deceased son, and carrying on business in partnership, filed a suit on the 19th July 1880. upon a *hatchitta*, dated the 11th December 1876. No time was fixed for the payment of money, but the last payment made and entored by the defendant on the *hatchitta* was dated 30th July 1877. On the 26th July, when the case came on for hearing, it was objected by the defendant that all the persons who sought to sue were not joined as plaintiffs. Thereupon, on the application of the original plaintiffs, the father and the third son, who were described as the surviving partners of the deceased son, were added as plaintiffs, but not until the suit as against them was barred by limitation. *Held* that the Court had rightly exercised its discretion in adding the 3rd and 4th plaintiffs to the record, although the suit was barred under s. 22 of the Limitation Act as against them. *Held* also that the claim of the original plaintiffs was likewise as much as they could only enforce that claim in conjunction with the other plaintiffs whose rights were barred under s. 22 of the Limitation Act. In actions of contract it is the right of the defendant, if he takes the objection in proper time, to insist upon all persons with whom he has contracted being joined as plaintiffs, and if, after the objection has been raised, the plaintiff proceeds with the suit without taking proper steps to add the person or persons whose non-joinder has been objected to, and the Court finds that the objection was well-founded, the suit must be dismissed. *Baydonath Bag v. Grish Chunder Roy* (I. L. R., 3 Cal. 26) dissented from. *Held*, further, that the suit would have been in time if all the plaintiffs had joined in the first instance. *Per Curiam*.—The words “prescribed period” in s. 20 of the Limitation Act mean, not the period prescribed for the payment of the debt, but the prescribed period of limitation. *Tarany Churn Nundee v. Shaikh Abdoor Rahman* (2 C. L. R. 345) doubted. There is no equity, but often much injustice, in allowing one joint contractor out of many to sue the defendant, notwithstanding an objection duly made by the latter, and the Court has no right to allow one co-contractor to recover under such circumstances, though he may, no doubt, adjust the same which he recovers with his co-contractors. As between the members of a joint family any one or more may be authorized by the rest to act as their agent or agents in any business-transaction; but when a joint family or any members of it carry on trade in partnership and contract with the outside public in the course of that trade, they have no greater privileges than any other traders; if they are really partners, they must be bound by the same rule for enforcing their contracts in Courts of law as the members of any other partnership.—*Ramsebuk v. Ram Lall Koondoo*, 8 C. L. R. 457. [Feb. 28, 1881.]

THE creditor of an insolvent, who had assigned all his property to trustees for the benefit of all his creditors generally, sued him for his debt, joining the trustees as defendants on the ground that they had refused to register his claim. The trustees had refused to register the claim on the ground that the plaintiff had not applied for its registration within the time notified by them, and that he would not consent to abide by the order which the High Court might make on an application by the trustees for its advice regarding the claims of creditors who, like the plaintiff, had applied for the registration of their claims after such time, but before the assets of the insolvent had been distributed. The deed of trust empowered the trustees to distribute the assets of the insolvent after a certain time among the creditors who had preferred their claims within that time, and declared that they should not be liable for such distribution to creditors who had not preferred their claims within that time; but it did not empower them to refuse to register claims made after that time, but before distribution of the assets. *Held* that the trustees had been properly joined as defendants in such suit; that their refusal to register the plaintiff's claim gave him a cause of action against them; and that, inasmuch as the plaintiff had applied for the registration of his claim before the distribution of the assets, the trustees had improperly refused to register it.—*Ajudhia Nath v. Anant Das*, I. L. R., 3 All. 799. [May 11, 1881.]

A, B, C, and D, were the proprietors of a 2a. 13g. share in mauza E, and also of a 2a. 13g. share in mauza F, both in the district of Bhāgalpur. On the 19th September 1872, A, B, C, and D, mortgaged their shares in E and F, together with property in the district of Tihūt, to the plaintiff. On the 24th March 1873, A mortgaged his share in E and F to J. On the 13th November 1872, A and B mortgaged their shares in E to K. On the 25th March 1874, J obtained a decree on his mortgage, and the interests of A and B were purchased on the 5th January 1875 by L. On the 17th April 1874, M, to whom the first mortgage had been assigned, obtained a decree, and attached the property mortgaged. L objected that he had already purchased the interests of A, and on the objection being allowed, M instituted a suit against L for a declaration of priority, and obtained a decree on the 9th August 1876. In execution of this decree the property first mortgaged was sold on the 4th March 1878, and after satisfying the mortgage, a surplus of Rs. 7,664

remained. After the institution of the first suit, and before L's purchase, the plaintiff instituted a suit upon his mortgage in the Tírhút Court without having obtained leave to include that portion of the mortgaged property situate in the Bhágalpur district. On the 17th July 1874, a decree was made in this suit. On the 17th January 1877, K obtained a decree on his mortgage, and shares of A and B in E were sold, and purchased on the 3rd September 1877 by N. The plaintiff had his decree transferred for execution to the Bhágalpur Court, and he attached the surplus sale-proceeds and a 1a. 9g. share in E. This attachment was withdrawn on the objection of L, who drew out the surplus sale-proceeds. The share purchased by N was also released from attachment. The plaintiff now sued L, N, and the mortgagors for a declaration that his decree of the 17th July 1874 affected the E property, to recover the surplus sale-proceeds from L, and in case the decree should not be valid to the extent mentioned, for a decree declaring his prior lien on the property in E. It was contended for the defendants that the Tírhút Court had no jurisdiction in respect of the Bhágalpur property; that the suit was bad for multifariousness; that certain persons, co-sharers with the plaintiff, should have been made parties; and that the cause of action had been split. *Held* that the Tírhút Court had no jurisdiction in respect of the Bhágalpur property; that the suit was not bad by reason of multifariousness; and that it was not necessary to make the plaintiff's co-sharers parties, as he might be regarded as contracting on behalf of himself and the other members of the family as undisclosed principals. *Held* also that the cause of action had been split.—*Bungsee Sing v. Soodist Lall*, 1. L. R., 7 Cal. 739. [Aug. 5, 1881.]

By the memorandum and Articles of Association of the new Dhurumsey Poonjabhoy Spinning and Weaving Company, the plaintiff's firm of M F and Co. were appointed agents of the Company for twenty-five years, and it was provided that they should have the general control and management of the Company. Cl. 98 of the Articles provided that the said firm, as such agent, should have full power and authority (*inter alia*) to appoint and to employ, in or for the purposes of the transaction and management of the affairs and business of the Company, such solicitors as they should think proper. An agreement, dated 26th August 1874, was also entered into between the Company and the partners in the firm of M F and Co., their executors, administrators, and assigns, for the time being constituting the partnership firm of M F and Co., whereby it was agreed that the said firm should be agents to the Company for twenty-five years to buy and sell, &c., and particularly to exercise all the powers contained in cl. 98 of the Articles of Association. Messrs. C and B were duly appointed solicitors to the Company, and acted as such for a considerable time. Merwánji Frámji, one of the members of the said firm of M F and Co., died in the middle of March 1876. The plaintiffs complained that G, one of the shareholders in the Company, became desirous of ousting the plaintiffs from the position of agents of the Company, and of becoming the managing director of the Company; that, in July 1881, he procured his own election, and that of certain nominees of his, as directors of the Company; and, on the 8th August 1881, procured the passing of a resolution at a Board-meeting to the effect that as Messrs. C and B, the Company's solicitors, were also the solicitors of the agents, it was desirable, for the interests of the Company, that a change should be made, and that Messrs. H, C, and L, be appointed solicitors of the Company. The plaintiffs alleged that the only object of passing the said resolution was to facilitate the design of G, of ousting the plaintiffs from their agency, and getting the management of the Company for himself; that Messrs. H, C, and L, had been for a long time the solicitors of G, and had been advising him in his designs upon the Company and upon the plaintiffs, and they contended that the resolution was a breach of the contract between the Company and the plaintiffs and a violation of the Articles of Association of the Company. The plaintiffs sued G and two other directors of the Company, and the Company itself, and prayed for an injunction against the defendants to restrain them from committing any breach of the agreement of 26th August 1874, and in particular from carrying into effect the resolution appointing Messrs. H, C, and L as solicitors for the Company, and to restrain them from doing any thing inconsistent with the memorandum and Articles of Association. The defendants contended that the contract of the 26th August 1874 had been determined by the death of Merwánji Frámji, and that the powers conferred on the agents by cl. 98 of the Articles were, subject to the general powers of management, vested in the directors by the Articles, and that the case was not one in which an injunction could be granted. *Held* that, having regard to the memorandum and Articles of Association, the contract was that the firm of M F and Co. for the time being should be the agents of the Company for twenty-five years, and that the right to sue on the contract by its nature survived to the plaintiffs after the death of Merwánji Frámji. *Held* also that there being no provision either in the Articles of Association or the agreement of 26th August 1874, that the power thereby conferred on the agents should be subject to the control or assent of the directors, there was no right in the directors to interfere with the agents in the exercise of their powers otherwise than

as representing the Company in virtue of their general powers of management. It being admitted that the conduct of the defendants would be supported by the Company in general meeting, owing to their having a preponderance of votes, *held* that, inasmuch as the Court would not, by a decree for specific performance or by injunction, compel the Company to retain the plaintiffs in the confidential position of agents, it would not restrain the defendants or the Company from appointing a solicitor, which was only a violation of what was ancillary or incidental to the principal part of the contract, *viz.* the agreement that the plaintiffs should be the agents of the Company for twenty-five years; and further, *semble*, that on the merits of the case the Court would not interfere on behalf of the plaintiffs. Counsel on behalf of the plaintiffs sought to obtain the injunction on the ground that the resolution of the 8th August 1881, appointing Messrs. H, C, and L solicitors to the Company, was contrary to the memorandum of Association, and, therefore, *ultra vires*; and, in order that this point might be pressed against the defendants, it was proposed that the plaint should be amended by alleging a cause of action in two of the plaintiffs as *shareholders*, as well as a cause of action in all the plaintiffs as *parties contracting* with the Company. *Held* that, under the provisions of ss. 26 and 31 of the Civil Procedure Code (Act X. of 1877), the amendment could not be allowed. The plaintiffs, as shareholders and contractors, had not the same cause of action, by which words were meant not only the act complained of, but also the right violated by that act. The rights of the plaintiffs as contractors, alleged to be violated by the resolution, were rights given to them by their agreement; but the rights of the plaintiffs as shareholders were rights secured to them by the Articles of Association.—*Nusserwánji Merwánji Pauday v. Gordon*, I. L. R., 6 Bom. 206. [Sep. 30, 1881.]

32. The Court may, on or before the first hearing, upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out;

Extending to Provincial S. C. Courts.

and the Court may at any time, either upon or without such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added,

No person shall be added as a plaintiff, or as the next friend of a plaintiff, without his own consent thereto.

Consent of person added as plaintiff or next friend.

Any person on whose behalf a suit is instituted or defended under s. 30 may apply to the Court to be made a party to such suit.

Parties to suits instituted or defended under section 30.

All parties whose names are so added as defendants shall be served, with summons in manner hereinafter mentioned, and (subject to the provisions of the Indian Limitation Act, 1877, section 22) the proceedings as against them shall be deemed to have begun only on the service of such summons.

The Court may give the conduct of the suit to such plaintiff as it deems proper.

Conduct of suit.

PLAINTIFF sued defendant for damages for slander of plaintiff's sister. The Court, regarding the suit as defective for want of parties, made plaintiff's sister a co-plaintiff under s. 73 of Act VIII. of 1859. *Held* that the defect was one not to be remedied under that section, and that as there was no right of suit in the plaintiff, the suit should have been dismissed.—*Subbaiyar v. Kristnaiyar*, I. L. R., 1 Mad. 383. [April 8, 1878.]

IN a suit by the purchaser of goods by sample against the vendors for damages, on the ground that the bulk did not correspond with the sample, the vendors applied, under Act X. of 1877, s. 32, to add the vendor to them on the same samples of the goods as a defendant, alleging that the question between the plaintiffs and themselves was the same as

that between themselves and their vendor. *Held*, refusing the application, that the plaintiffs "ought not to have the vendor to the defendants made a party to the suit, and that his presence was not necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit."—*Mahomed Badshah v. Nicol Fleming*, 1. L. R., 4 Cal. 355. [July 1, 1878.]

B AND N, the mortgagees of a mehal, granted the mortgagors a lease of the mehal, the mortgagors agreeing to pay the mortgagees a certain rent half-yearly on account of the right they held in equal shares, and that, in default of payment of such rent, "the mortgagees" should be entitled to sue for payment. The mortgagors having made default in payment of the rent, and N refusing to join in a suit against the mortgagors to enforce payment, B sued them alone for a moiety of the rent due. The Revenue Court of first instance held, with reference to Act XVIII. of 1873, s. 10i, that it could not sue separately. *Held* by the High Court that the order of the Revenue Court of first appeal, directing (*inter alia*) that the Court of first instance should re-try the suit after making N a defendant in the suit, was not illegal, notwithstanding that the provision of Act X. of 1877, s. 32, were not made applicable to the procedure of the Revenue Courts by Act XVIII. of 1873.—*Shib Gopal v. Baldeo Sahai*, 1. L. R., 2 All. 264. [April 15, 1879.]

A SUEB as only son and heir of his father B. C, the widow of B, having, with the concurrence of A, taken out letters of administration of B's estate, was, on the application of A at the hearing of the suit, made a co-plaintiff under s. 32 of the Civil Procedure Code. *Held* that C ought not to have been joined as a plaintiff in the suit, inasmuch as A has no right at all to sue. S. 32, as far as the addition of plaintiffs is concerned, only applies to those cases in which the original party who brought the suit has some title to sue. *Per* Pontifex, J. "The power given by s. 27 of the Code ought to be exercised before the first hearing of the case. *Held* also that s. 2 of Act XXVII. of 1860 prohibited A from suing alone, for although he was, no doubt, beneficially entitled to recover it, yet there was no vexatious or fraudulent withholding of the debt within the meaning of that section. *Per* Garth, C.J. "A debt cannot be said to be "vexatiously withheld" within the meaning of that section simply because the debtor omits to pay it.—*Clauder Coomar Roy v. Gocool Chunder Bhattacharjee*, 1. L. R., 6 Cal. 370. [Aug. 29, 1879.]

S SUEB N and R jointly and severally for certain moneys. The Court of first instance gave S a decree for such moneys against N, and dismissed the suit against R. N appealed from the decree of the Court of first instance, but S did not appeal from it. The Appellate Court, at the first hearing of N's appeal, made R a respondent, the period allowed by law for S to have preferred an appeal having then expired, and eventually reversed the decree of the Court of first instance, dismissing the suit as against N, and giving S a decree against R. *Held* that, although the Appellate Court was competent to make R a party to the appeal under ss. 32 and 582 of Act X. of 1877, yet it was not competent, with reference to s. 22 of Act XV. of 1877, to give S a decree against R, the former not having appealed from the decree of the Court of first instance within the time allowed by law.—*Ranjit Sing v. Sheo Prasad Rani and another*, 1. L. R., 2 All. 487. [Nov. 17, 1879.]

HELD, reading ss. 28, 29, and 32 of Act X. of 1877 together, that, where an application is made under s. 32 for the addition of a person, whether as plaintiff or defendant, such person should, as a general rule, be added only where there are questions directly arising out of and incidental to the original cause of action, in which such person has an identity of community of interest with the original plaintiff or defendant. Two suits against K for possession of the property of B, deceased, were instituted in the Court of the Subordinate Judge by parties claiming adversely to one another as heirs to B. The Subordinate Judge, on the applications of the plaintiffs in these suits, under s. 32 of Act X. of 1877, added the plaintiffs in the first suit as defendants in the second, and the plaintiffs in the second suit as defendants in the first. *Held* on appeal by the defendant K from the orders of the Subordinate Judge, applying the rule stated above, that such addition of parties, not being necessary to enable the Subordinate Judge "effectually and completely to adjudicate upon and settle all the questions involved in the suit," were not proper. The principles on which s. 73 of Act VIII. of 1850 should be interpreted enunciated by Sir Barnes Peacock in *Jaygobind Dass v. Gauri Pershad Shah* (7 W. R. 222), *Raja Ram Tewari v. Lachman Pershad* (8 W. R. 15), and *Ahmad Hussain v. Khodaja* (10 W. R. 316; 3 B. L. R., A. C., 28); and the remarks of Pontifex, J., in *Muhammed Badshah v. Nicol Fleming* (1. L. R., 4 Cal. 355), followed and applied.—*Naraini Kuar v. Durjan Kuar*; *Naraini Kuar v. Piarey Lal*, 1. L. R., 2 All. 738. [Feb. 2, 1880.]

IN a suit for the partition of joint family property, the mortgagees of the right, title, and interest of the plaintiff, applied under Act X. of 1877, s. 32, to be added as parties. *Held* that their presence was not necessary in order "to enable the Court effectually and completely to adjudicate and settle all the questions involved in the suit" within the meaning of s. 32. *Held* also that that section does not contemplate any application to the Court by the person proposed to be added.—*Mohindrohhosun Biswas v. Shosheebhoosun Biswas*, I. L. R., 5 Cal. 882. [April 8, 1880.]

AN order refusing an application under Act X. of 1877, s. 32, by a person to be added as a defendant in a suit, is not applicable.—*Karman Bibi v. Misri Lal*, I. L. R., 2 All. 904. [May 27, 1880.]

A PERSON alleged to be a lunatic, though not found so under Act XXV. of 1858, may appear either by *vakil* or in person. Under s. 32 of the Code of Civil Procedure no person can be added as a plaintiff unless he has previously consented thereto; and if a person objects to be added as a plaintiff, the proper course is to make him a defendant.—*Uma Sundari Dasi v. Ramji Haldar*, I. L. R., 7 Cal. 242. [Mar. 7, 1881.]

IN a suit for rent, where the defendant alleged that a person not on the record had a joint interest with the plaintiff in the property in respect of which the rent was due, *held*, where the plaintiff disputed this, and objected to such course being taken, that it was improper to add such person as co-plaintiff, and that, if added at all, it should be as defendant, in order that the issue between him and the plaintiff might be properly tried. *Held* also that in such a case an appeal lies under s. 591 of the Civil Procedure Code.—*Googlee Sahoo v. Prem Lal Sahoo*, I. L. R., 7 Cal. 148. [April 21, 1881.]

IN a suit for rent at enhanced rate brought by all the shareholders in the estate the rent of which it was sought to enhance, it appeared that the notice of enhancement issued under s. 14 of Act VIII. (B.C.) of 1869 had been issued at the instance of some only of the persons entitled to the rent. *Held*, by Garth, C.J., and Pontifex and Mitter, J.J. (Morris and McDonell, J.J., *dissentientibus*), that the suit would lie. *Per* Garth, C.J.—The right to enhance rent from time to time as occasion arises is one of those incidents of the contract which the landlords or any of them have a right to enforce. Where some of the co-sharers refused to join in a suit to enforce such right, the co-sharers desirous of bringing the suit may do so under s. 32 of the Civil Procedure Code (Act X. of 1877), making the recusant co-sharers defendants. *Per* Morris and McDonell, J.J.—A suit cannot be brought by a co-sharer in actual separate receipt of a share of the rent for enhanced rent of his share, though notice be served in respect of the whole rent, and all the co-sharers be made parties to the suit. Nor will a suit for arrears of rent at enhanced rate, brought by all the shareholders, lie where the notice of enhancement under s. 14 of Act VIII. (B.C.) of 1869 has been issued at the instance of some only of the persons entitled to the rent. *Per* Garth, C.J.—Those persons who are entitled to sue as landlords have also the right under s. 14 of Act VIII. (B.C.) of 1869 to give the necessary previous notice. *Per* Morris, J.—The person to whom the rent is payable must, where more persons than one are entitled to receive the rent, signify all such persons.—*Chuni Singh v. Hira Mahata*, 9 C. L. R. 37. [June 17, 1881.]

THE words in para. 1 of s. 53 of the Code of Civil Procedure (Act X. of 1877), "at or before the first hearing," are merely directory and not mandatory, and therefore a plaintiff may, subsequently to the "first hearing," amend his plaint, provided such amendment does not alter the original character of his suit. The plaintiffs (mortgagees) in a suit against their mortgagees sought only for production of the mortgage-deed or for an account, although the averments in the plaint warranted a prayer for redemption. Subsequently to the first hearing of the suit they applied to be allowed to amend the plaint by adding a prayer for redemption. *Held* that the provisions of s. 53 of the Civil Procedure Code (Act X. of 1877) did not preclude the Court from permitting the amendment to be made. It is competent to a Court, at any time before passing a decree, to frame an additional issue embracing a matter not included in the plaint (provided it be not inconsistent with it), or in the written statement, but which may appear upon the allegations made on oath by the parties, or by any person present on their behalf, or made by the pleaders of such parties or persons. S. 34 of the Civil Procedure Code (Act X. of 1877) limits the time within which a defendant may object for want of parties, but it does not so limit the right of the plaintiff to add parties. In some cases s. 34 would not prevent even a defendant from objecting to the want of a party after the first hearing, *e.g.*, where after the first hearing and before decree a co-parcener or remainderman or reversioner is born, or where a woman who is a party is married to a man who is not a party to the suit. The objection did not exist at or before the first hearing, and therefore could not have been made or waived by the defendant; and if he made it at the

earliest opportunity after it came into existence, he would have satisfied the spirit of s. 34.—*Modhe (R. and N.) v. Dongre (S.)*, I. L. R., 5 Bom. 609. [Aug. 2, 1881.]

THE object of s. 32, which enables a Court to add parties whose presence before the Court may be necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, is to enable the Court to try and determine, once for all, material questions common to the parties, and to third parties, and not merely questions between the parties to the suit.—*Vydianádáyyan v. Sítarámáyyan*, I. L. R., 5 Mad. 52. [Oct. 24, 1881.]

THE plaintiffs brought a suit to recover certain sums of money from the defendants, due to them under certain contracts which they alleged had been entered into by themselves and one A D as agent of the defendants, and asked for an account. The defendants, in their written statement, contended that there was no privity of contract between themselves and the plaintiffs, and denied the alleged agency of A D. The plaintiffs, before the hearing, applied to the Court to have A D added as a party-defendant under ss. 28 and 32 of Act X. of 1877, asking to be allowed to amend their plaint so as to pray for relief in the alternative against the original defendants or the said A D, or both against the original defendants and the said A D. *Held* that, under s. 28, they were entitled to the order on the authority of the case of *Child v. Stenning* (L. R., 5 Ch. D. 695).—*Buddree Doss v. Hoare, Miller, and Co.*, I. L. R., 8 Cal. 170. [Dec. 15, 1881.]

THE Secretary of State is not a necessary party to a suit to set aside a sale for arrears of revenue, but the Government have such interest as would, on their application, entitle them to be made a party. S. 424 of the Civil Procedure Code does not preclude a Court from adding the Secretary of State as a necessary party under s. 32 of the Code.—*Bal Mokoond Lall v. Jirjudhun Roy*, I. L. R., 9 Cal. 271. [June 23, 1882.]

DURING the hearing of a suit for recovery of immoveable property it appeared from the evidence and certain documents put in that the plaintiff had mortgaged his right, title, and interest to a third person, by whom the suit was practically being carried on. On an application by the defendant for the mortgagee to be added as a party-defendant under the provisions of s. 32 of the Civil Procedure Code, the Court directed a rule to issue, calling on him to show cause why he should not be added as a party-defendant or give security for costs. The rule was not applied for on petition or affidavit, and set out no grounds for the application at all. On an objection taken by the mortgagee at the hearing of the rule, *held* that the grounds should have been stated on affidavit or have appeared on the face of the rule, and that the mortgagee was entitled to know what he had to answer, and consequently, the rule being informal, it was discharged with costs.—*Ramnarain Kallia v. Monce Bibee, and Ramnarain Kallia v. Gopal Doss Sing*, I. L. R., 9 Cal. 735. [Feb. 22, 1883.]

THE plaintiff in a partnership-suit, to which there were twenty-one defendants, applied to the Court for leave to withdraw the suit, or that the suit might be dismissed. Ten of the defendants supported the plaintiff's application. Two of the defendants objected, and applied, under s. 32 of the Civil Procedure Code (Act X. of 1877), that they might be made plaintiffs, and that the plaintiff might be made a defendant. The Court granted their application.—*Edulji Muncherji Wáchá v. Vullebhoy Khánbhoy*, I. L. R., 7 Bom. 167. [Mar. 1, 1883.]

V SUE D his brothers for his share of the estate of their deceased father, the father and sons being divided. V having been transported for life, his sons applied to be made plaintiffs in the suit on the ground that they had a joint interest with their father in their grandfather's estate. *Held* that, under the circumstances, the application was properly granted.—*Narákká v. Nárayana*, I. L. R., 6 Mad. 331. [Mar. 2, 1883.]

A SUE D V and S to establish his right to attach a certain house in execution of a decree obtained by him in a previous suit. In their written statement the defendants alleged that A had obtained the decree in question by fraud. Shortly before the present suit, V had mortgaged the house to H for Rs. 33,000. About three weeks after the suit had been filed, H advanced a further sum of Rs. 5,000 to V on the same security, and on the same day (12th December 1881) entered into an agreement with V, by which he agreed to buy the house for Rs. 45,000, the sale to be completed immediately after the decision of the present suit. The agreement provided that V should defend the suit: but, if the result of the suit should be to establish the plaintiff's right to seize the house in execution, then that H should be at liberty to cancel the contract of sale. Subsequently V wrote to H, declaring his intention of abandoning his defence. H thereupon applied to be made a defendant to the suit, in order to protect the house from the plaintiff. *Held* that H was entitled to be made a party under ss. 32 and 372 of the Civil Procedure Code (Act XIV. of 1882). *Held* also that the agreement of 12th December

amounted to an absolute sale, by V to H, of the equity of redemption of the house in question, and that it was not champertous.—*Ahmedbhoy Hubibhoy v. Vulleebhoy Cás-umbhoy*, I. L. R., 8 Bom. 323. [May 5, 1884.]

ALTHOUGH a Court is bound by s. 368 of the Code of Civil Procedure to place on the record the name of the person alleged by the appellant to be the legal representative of a deceased respondent, nevertheless, where a person, other than the person alleged by the appellant to be such representative, claims, on good *prima facie* grounds, to be the representative of the deceased respondent, and the interests of the person entitled to the estate of the deceased may be prejudiced, the Court should, under s. 32 of the Code of Civil Procedure, proceed to make such claimant also a party to the appeal.—*Athiappa v. Ayanna*, I. L. R., 8 Mad. 800. [Oct. 20, 1884.]

THERE is no power in the Code of Civil Procedure (Act XIV. of 1882) to make a party to the suit a co-appellant. Ss. 32 and 582 of the Code give to an Appellate Court power only to strike out the name of a party, or to direct new parties to be added to the suit, whether as plaintiffs or defendants.—*Vásudev Bálkrisná v. Sálubái*, I. L. R., 10 Bom. 227. [Sep. 7, 1885.]

A COURT may, in the exercise of its discretion under s. 32 of the Civil Procedure Code, add a party to a suit upon his own application.—*Rabbaba Khanum v. Noor Jehan Begum alias Darlim Shahiba*, I. L. R., 13 Cal. 90. [Mar. 12, 1886.]

AN order rejecting an application under s. 32 of the Civil Procedure Code to be made a party to a suit is not appealable under cl. 2, s. 588.—*Abirunissa Khatoon v. Komurunnissa Khatoon*, I. L. R., 13 Cal. 100. [April 13, 1886.]

A MITTA held by tenants in common was sold for arrears of revenue at a time when the owners of a moiety thereof were minors. In a suit brought by the mother of these minors on their behalf against the Collector to set aside the sale, the District Court held that Reg. X. of 1831, s. 2, absolutely debarred the Collector from selling the estate of the minors during their minority, and set aside the sale so far as their interests were concerned. *Held*, on appeal, that the minors not being sole proprietors, their estate was not one of which the Court of Wards could assume the management, and, therefore, s. 2 of Reg. X. of 1831 did not affect the sale. In the above-mentioned suit the plaintiffs impleaded also the other previous owners, of whom one was the purchaser at the sale. Two others, in their written statement, pleaded that the purchase had been made in fraud of their rights, and claimed to be still entitled to their shares in the mitta on the ground that the purchaser must be held to have purchased for their benefit (Indian Trusts Act, 1882, s. 90). They further claimed that, should the sale be set aside so far as the plaintiffs' interests were concerned, the sale of their interests also should be held to be null and void. Before the suit came on for hearing the District Judge, *sup motu*, ordered that the two defendants should be made plaintiffs in the suit under s. 32 of the Code of Civil Procedure. At the date when this order was made, the claim of these defendants, had they sued to set aside the sale in their own interest, was barred by limitation. *Held* that the order was illegal.—*Krishna v. Mekamperuma*, I. L. R., 10 Mad. 44. [April 15, 1886.]

33. Where a defendant is added, the plaint, if previously filed, shall, Extending to Provincial S. C. Courts.
Where defendant added, unless the Court direct otherwise, be amended in
plaintiff to amend. such manner as may be necessary, and an amended
copy of the summons shall be served on the new defendant and the original
defendants.

34. All objections for want of parties, or for joinder of parties, who Ditto.
have no interest in the suit, or for misjoinder as
Time for taking objections as to non-joinder or mis-joinder, co-plaintiffs or co-defendants, shall be taken at the
earliest possible opportunity, and in all cases before the first hearing; and any such objection not so taken shall be deemed to have been waived by the defendant.

THE words in para. 1 of s. 53 of the Code of Civil Procedure (Act X. of 1877), "at or before the first hearing," are merely directory and not mandatory, and therefore a plaintiff may, subsequently to the "first hearing," amend his plaint, provided such amendment does not alter the original character of his suit. The plaintiffs (mortgagors) in a suit against their mortgagees sought only for production of the mortgage-deed or for an account, although the averments in the plaint warranted

a prayer for redemption. Subsequently to the first hearing of the suit they applied to be allowed to amend the plaint by adding a prayer for redemption. *Held* that the provisions of s. 53 of the Civil Procedure Code (Act X. of 1877) did not preclude the Court from permitting the amendment to be made. It is competent to a Court, at any time before passing a decree, to frame an additional issue embracing a matter not included in the plaint (provided it be not inconsistent with it), or in the written statement, but which may appear upon the allegations made on oath by the parties, or by any person present on their behalf, or made by the pleaders of such parties or persons. S. 34 of the Civil Procedure Code (Act X. of 1877) limits the time within which a defendant may object for want of parties, but it does not so limit the right of the plaintiff to add parties. In some cases s. 34 would not prevent even a defendant from objecting to the want of a party after the first hearing, *e. g.*, where after the first hearing and before decree a co-parcener or remainderman or reversioner is born, or where a woman (who is a party) is married to a man who is not a party to the suit. The objection did not exist at or before the first hearing, and therefore could not have been made or waived by the defendant; and if he made it at the earliest opportunity after it came into existence, he would have satisfied the spirit of s. 34.—*Modhe (R. and N.) v. Donger (S.)*, I. L. R., 5 Bom. 609. [Aug. 2, 1881.]

Extending to
Provincial S.
& Courts.

35. When there are more plaintiffs than one, any one or more of them

Each of several plaintiffs or defendants may authorize any other to appear, &c., for him.

may be authorized by any other of them to appear, plead, or act for such other in any proceeding under this Code: and in like manner, when there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead, or act for such other in any such proceeding.

Authority to be in writing, signed and filed.

The authority shall be in writing signed by the party giving it, and shall be filed in Court.

Recognized Agents and Pleadors.

Ditto.

36. Any appearance, application, or act in or to any Court, required

"Appearances, &c., may be in person, by recognized agent, or by pleader.

or authorized by law to be made or done by a party to a suit or appeal in such Court, may, except when therewith expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf:

Provided that any such appearance shall be made by the party in person, if the Court so direct.

NONE but barristers and attorneys have a legal right to practise in the Bombay Court of Small Causes. Neither ss. 2 and 36 of the Code of Civil Procedure (Act No. XIV. of 1882), nor ss. 38 and 76 of the Presidency Small Cause Courts Act (No. XV. of 1882), give the pleaders of the Bombay High Court that right. The provisions of s. 47 of Reg. II. of 1827, authorizing persons holding *sanads* from the High Court to practise in the *Mofussil* Courts, are still in force. *Per* Bayley, West, Pinhey, and Latham, JJ.—S. 2 of the Code of Civil Procedure, 1882, does not give every pleader a title to appear and plead; it only enacts that pleader means every person entitled to appear and plead for another in Court, and includes an advocate, a *takil*, and an attorney of a High Court. Consequently, if pleaders or *takils*, who are the same class of practitioners, are not entitled by law to appear or plead for another in Court, the definition of 'pleader' gives them no new right or *status*. The words in s. 36 of the Code of Civil Procedure (Act XIV. of 1882), "by a pleader duly appointed to act on his behalf," do not simply mean a person duly appointed by the party in the suit, but a pleader duly appointed according to law regarding pleaders in force in the particular Court.—*In re* Pleadors of the High Court; I. L. R., 8 Bom. 105. [Dec. 14, 1883.]

Ditto.

37. The recognized agents of parties by whom such appearances,

Recognized agent.

applications, and acts, may be made or done, are—

(a) persons holding general powers of-attorney from parties not resident

Persons holding powers-of-attorney from parties out of jurisdiction.

within the local limits of the jurisdiction of the Court within which limits the appearance, application, or act, is made or done, authorizing them to make and do such appearances, applications, and acts on behalf of such parties ;

(b) mukhtárs duly certificated under any law for the time being in

Certificated mukhtárs.

force, and holding special powers-of-attorney authorizing them to do, on behalf of their principals, such acts as may legally be done by mukhtárs ;

(c) persons carrying on trade or business for and in the names of parties

Persons carrying on trade or business for parties out of jurisdiction.

not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application, or act, is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications, and acts.

Nothing in the former part of this section applies to the territories now

Recognized agents in Panjáb, Oudh, and Central Provinces.

administered respectively by the Lieutenant-Governor of the Panjáb, and the Chief Commissioners of Oudh and the Central Provinces ; but in those territories the recognized agents of parties by whom such appearances, applications, and acts, may be made and done, shall be such persons as the Local Government may, from time to time, by notification in the official Gazette, declare in this behalf.

To satisfy the conditions of s. 76 of the Civil Procedure Code (Act X. of 1877) as to service of summons on an agent, there must be a person residing without the local jurisdiction, but carrying on business or work within those limits by a manager or agent, and sued on account of such work—that is, business either actually itself carried on by the agent or manager, or forming part of the business in the sense of a connected course of transactions to the management of which he has been duly appointed. Ss. 76 and 37, cl. c, are to be construed together, and are intended to carry out the same scheme of relief, which rests upon the idea that where an agent has been put forward substantially to take the place of his principal within a particular jurisdiction, he should take the place of such principal (at the option of any person who has dealt with him) in any legal proceedings that may arise out of the business or work in which the agent has been virtually a local principal. The manager or agent contemplated by the Code is one who has an initiative and independent discretion, albeit subject possibly to principles and general orders prescribed for his guidance. A mere servant employed to carry out orders or to execute a particular commission, or a factor or common agent who is not identified with the firm for which he acts, is not such an agent. The firm of Ganesh Lall Soonder Lall carried on business at Agra. It had no place of business in Bombay, but it employed G as its agent in Bombay in certain dealings which it had with the plaintiff. The letters and telegrams of the firm to G were sent to the plaintiff's place of business, or addressed to G as an individual, not in the name of the firm. G did not himself initiate any business, or in any way stand between his employer's firm and the plaintiff. Held that G was not the defendant's manager or agent within the meaning of the Civil Procedure Code, s. 76, and that, in an action against the defendants, service of summons upon him was not due service. G in particular instances drew hundis on the firm of Ganesh Lall Soonder Lall, which that firm duly accepted and paid. Held that he might reasonably be deemed their agent or manager for this particular kind of business, if for no other ; and service on him might probably suffice in the case of a plaintiff suing on hundi-transactions as with the firm through him. Service unduly made under s. 76 does not become effectual by reason of the fact of such service being subsequently notified to the parties really interested as defendants. *Symbol.*—Service duly effected under s. 76 is effectual without reference to the circumstance of its being or not being communicated to the real defendants.—*Gocul-dás Dwárakadās v. Ganeshlál Halasroy*, I. L. R., 4 Bom. 416. [June 22, 1880.]

THE term 'non-resident' in s. 37, cl. a, of the Code of Civil Procedure (Act X. of 1877), covers every absence which may reasonably be supposed to have been within the contemplation of the Legislature in using that term ; thus, where a Mār-wādi had resided for

forty years at Pen, and had also a place of business there, but who had gone to his native country to get his sisters married, and had been absent upwards of four months, it was held that he was 'non-resident' within the local limits of the jurisdiction of the Pen Court, and that a person holding a general power-of-attorney from him was a recognized agent within the meaning of the section.—*Rámchandra Sákharsám v. Keshav Durgáji*, I. L. R., 6 Bom. 100. [Dec. 12, 1881.]

A suit was brought by the Political Agent, Southern Marátha Country, as administrator of the estate of the Chief of Mudhol, who was described in the plaint as being nineteen years of age, to eject the defendants from certain lands, belonging to the Chief, situated in the Sátára District. The defendants raised a preliminary objection to the institution of the suit by the Political Agent, on the ground that he was neither a certificated guardian of the Chief under the Bombay Minors' Act (XX. of 1864), nor a recognized agent within the meaning of s. 37 of the Civil Procedure Code. Held that the appointment, by Government, of the Political Agent to manage the estate of the Chief of Mudhol during a certain period could not give him the position contemplated by the Bombay Minors' Act (XX. of 1864). With regard to property in British India, he had no authority to sue on behalf of the minor, without obtaining a certificate of administration under the Act. Held also that the Political Agent was not a "recognized agent" of the Chief of Mudhol within the meaning of s. 37, cl. c of the Code of Civil Procedure. Held also that the irregularity of the Political Agent's suing for the Chief, without authority, was one affecting the merits of the case, though not the jurisdiction of the Court. If the Political Agent was not properly representing the Chief, he had no merits, no right as against the defendants. The District Judge was, therefore, right in reversing the decrees of the first Court, s. 578 of the Code of Civil Procedure having no application to the present case.—*Venkatráv Ráje Ghorpáde v. Mádhavár Rámchandrá*, I. L. R., 11 Bom. 53. [July 28, 1886.]

Extending to
provincial S.
Courts.

38. Processes served on the recognized agent of a party to a suit or

Service of process on recognized agent.

appeal shall be as effectual as if the same has been served on the party in person, unless the Court otherwise directs.

The provisions of this Code for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

Ditto.

39. The appointment of a pleader to make or do any appearance, ap-

Appointment of pleader.

plication, or act as aforesaid, shall be in writing, and such appointment shall be filed in Court.

When so filed, it shall be considered to be in force until revoked with the leave of the Court, by a writing signed by the client and filed in Court, or until the client or the pleader dies, or all proceedings in the suit are ended so far as regards the client.

No advocate of any High Court established by Royal Charter shall be required to present any document empowering him to act.

Ditto.

40. Processes served on the pleader of any party, or left at the office

Service of process on pleader.

or ordinary residence of such pleader, relative to a suit or appeal, and whether the same be for the

personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents; and, unless the Court otherwise directs, shall be as effectual for all purposes in relation to the suit or appeal as if the same had been given to or served on the party in person.

Ditto.

41. Besides the recognized agents described in s. 37, any person resid-

Agent to receive process.

ing within the jurisdiction of the Court may be appointed an agent to accept service of process.

Such appointment may be special or general, and shall be made by an instrument in writing, signed by the principal; and

His appointment to be in writing, and to be filed in Court

such instrument, or, if the appointment be general, a duly attested copy thereof, shall be filed in Court.

CHAPTER IV.

OF THE FRAME OF THE SUIT.

42. Every suit shall, as far as practicable, be so framed as to afford ground for a final decision upon the subjects in dispute, and so to prevent further litigation concerning them.

Suit how to be framed.

IN disposing of a second appeal, the High Court is competent, under Act X. of 1877, s. 42, to consider the question whether the plaintiff has any cause of action or not although such question has not been raised by the defendant-appellant in the Court below or in his memorandum of second appeal, but is raised for the first time at the hearing of such appeal.—*Lachman Prasad v. Bahadur Singh*, I. L. R., 2 All. 884. [May 7, 1880.]

UNDER ss. 42 and 43 of the Civil Procedure Code, plaintiffs must bring their entire claim and every remedy enforceable in respect of that claim into Court at once; and, if they fail to do that in any suit, they cannot afterwards avail themselves of any remedy on which they have not chosen to insist in the first suit. Suits for enhanced rent, and suits for rent, are claims arising in respect of the same subject-matter, and a plaintiff cannot be allowed, after having unsuccessfully sued for rent at an enhanced rate, to sue for the original rent for previous years — *Kunnook Chunder Mookerjee v. Guru Dass Biswas*, I. L. R., 9 Cal. 919. [May 31, 1883.]

R PURCHASED two houses under the same sale-deed. Four years afterwards, he sued for possession of one of the houses, alleging that he had been dispossessed by the ancestor of the defendant. Subsequently he sued the same defendant for possession of the other, alleging that, at the time when he instituted the former suit, he had already been dispossessed of the house now in question, and by the same person. Held that although the plaintiff's title to both houses rested on the title acquired by him under one and the same sale-deed, yet the cause of action, viz., his ouster from the two houses on different occasions, gave rise to two separate causes of action, which he was not bound to join in the former suit, there being nothing in the Civil Procedure Code to compel him to do so. *Jardine Skinner and Co. v. Ranee Shama Soonduree Debia* (13 W. R. 196) and *Ram Sunder Saha v. Delaney* (20 W. R. 103) referred to.—*Riazatullah Khan v. Nasir Khan*, I. L. R., 6 All. 616. [July 8, 1884.]

43. Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

If a plaintiff omit to sue in respect of, or intentionally relinquish, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

Relinquishment of part of claim.

A person entitled to more than one remedy in respect of the same cause of action may sue for all or any of his remedies; but if he omits (except with the leave of the Court obtained before the first hearing) to sue for any of such remedies, he shall not afterwards sue for the remedy so omitted.

For the purpose of this section, an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action.

Illustration.

A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1881 and 1882 is due and unpaid. A sues B only for the rent due for 1882. A shall not afterwards sue B for the rent due for 1881.

S, as one of the heirs of his brother, sued the sons of M, the other heirs of M, for, amongst other things, a declaration of his right to share in the rights and interests of M as the mortgagor under a deed of mortgage, which he valued at the principal sum advanced under the mortgage, viz., Rs. 5,600, stating his cause of action to be the obstruction caused by the sons of M to his sharing in M's estate. He obtained a decree declaring

his title to the share claimed. L, one of the sons of M, had fraudulently concealed from, and kept S in ignorance of, the fact that previously to the suit he had realised Rs. 8,624 under the mortgage. On this fact coming to S's knowledge, he sued the sons of M to recover his share of that sum. *Held* that the second suit was not barred by s. 7 of Act VIII. of 1859. *Bulwant Singh v. Chittan Singh* (H. C. R., N. W. P., 1871, p. 27) followed and observed on.—*Lachman Singh v. Sanwal Singh*, I. L. R., 1 All. 543. [Jan. 2, 1878.]

WHERE a plaintiff originally sued for a certain sum upon his khatta-books, and an objection was taken by the defendant that he ought to have sued upon a hatchitta, whereupon the plaintiff amended his plaint by suing for the amount admittedly due upon the hatchitta, in addition to the amount he claimed upon his khatta-books, *held* that, when the plaintiff amended his plaint by suing upon the hatchitta, his causes of action, which, when the suit was originally framed, were distinct, became united; that there was no *relinquishment* in the original suit within the terms of Act VIII. of 1859, s. 7 (corresponding with Act X. of 1877, s. 43); and that the plaint was rightly amended.—*Ram Tarrun Koondoo v. Hossein Buksh*, I. L. R., 3 Cal. 785. [April 5, 1878.]

HELD, where two suits were instituted simultaneously, and one of such suits had been determined, that, assuming that the claims in such suits arose out of the same cause of action, and should have been included in one suit, the provisions of s. 7 of Act VIII. of 1859 were no bar to the entertainment of the second suit.—*Kaleshar Prasad v. Jagan Nath*, I. L. R., 1 All. 650. [April 25, 1878.]

A, a Hindu widow, granted, without legal necessity, a mukarrari lease of certain mauzas, portion of her husband's estate, to B. During B's possession part of the lands comprised in the granted mauzas were taken up by Government, and the compensation-money was lodged in the collectorate. A having afterwards died, the next heirs of A's husband, on the 7th October 1871, sued B to recover possession of the mauzas, but, not being aware of the facts, did not, in that suit, claim the compensation-money lying in the collectorate. While this suit was still pending, B, in March 1872, drew the compensation-money out of the collectorate. The heirs, after obtaining a decree against B for possession of the mauzas, on the 13th September 1875, instituted a fresh suit against him to recover the compensation-money wrongfully drawn out by him from the collectorate. *Held*, first, that the suit was not barred by s. 7 of Act VIII. of 1859. *Held* also that it was not barred by limitation, although more than three years had elapsed since the money had been drawn out by B. art. 118 (and not art. 60) of sch. 2 of the Limitation Act (IX. of 1871) applying to the case. *Held*, further, that the claim of the heirs was a proper subject for a regular suit, and could not have been heard and determined in the course of the proceedings in execution of the decree which they had obtained against B for possession of the mauzas.—*Nund Lal Bose v. Meer Aboo Mahomad*, I. L. R., 5 Cal. 597. [July 14, 1879.]

D, BEING able to sue for the possession of certain property, omitted to do so, and sued in the first instance only for a declaration of her right to such property. The Court refusing to make any such declaration on the ground that she could sue for possession, D then sued for possession. *Held* that the second suit was not barred by s. 7 of Act VIII. of 1859. See also *Tulsiram v. Gungaram* (I. L. R., 1 All. 252).—*Darbo v. Kesho Rai*, I. L. R., 2 All. 356. [Aug. 13, 1879.]

THE obligee of a bond for the payment of money, hypothecating immoveable property as a collateral security for such payment, sued for the moneys due on the bond, but omitted to claim the enforcement of his lien, and obtained a decree only for the payment of the amount of the bond-debt. He subsequently sued to enforce his lien. *Held* that, under Act X. of 1877, s. 43, as amended by Act XII. of 1879, s. 7, he could not be permitted to sue to enforce his lien.—*Gumani v. Ram Padarath Lal*, I. L. R., 2 All. 838. [April 14, 1880.]

THE usufructuary mortgagee of certain land gave a lease of it to the mortgagor, the latter hypothecating the land as security for the payment of the rent. Arrears of rent accruing, the mortgagee sued the mortgagor for the same in the Revenue Court, and obtained a decree. Subsequently the mortgagee sued the mortgagor in the Civil Court to recover the amount of such decree by the sale of the land, claiming under the hypothecation. *Held* that the second suit was not barred by the provisions of s. 43 of Act X. of 1877.—*Banda Hasan v. Abadi Begam*, I. L. R., 4 All. 180. [May 6, 1880.]

A MORTGAGEE brought a suit against the mortgagor to have a declaration of his lien over the mortgaged properties, and obtained a decree. He afterwards brought another suit against certain attaching creditors of his mortgagor, to have a declaration of his lien over certain surplus moneys in the hands of the Collector, who, previous to the institution of the first suit, had sold certain of the mortgaged properties free of all incumbrances for arrears of Government revenue. *Held* that the second suit was not barred under Act VIII. of 1859, s. 7. *Held* also that the mortgage-decree declaring the lien over all the

mortgaged properties covered the surplus sale-proceeds then in the hands of the Collector, because these moneys must, as between the mortgagee and attaching creditors of the mortgagor, be taken to represent the mortgaged properties. *Heera Lal Chowdhry v. Jankee Nath Mookerjee* (16 W. R. 222) followed. The doctrine of marshalling does not apply as between a mortgagee and attaching creditors of the mortgagor who hold mere money-decrees. The period of limitation prescribed by art. 15, sch. 2, Act IX. of 1871, for a suit to set aside an order of a Civil Court, does not apply where the order simply amounts to a declaration that the Court considers it has no jurisdiction to act in the proceeding before it.—*Kristodass Kundoo v. Ramkant Roy Chowdhry*, I. L. R., 6 Cal. 142. [June 10, 1880.]

THE plaintiff held a mortgage of certain immoveable property given to him by the defendant to secure the repayment of a loan of money with interest. The plaintiff stated the fact of the mortgage, but prayed only for a money-decree. The mortgage contained a personal undertaking to repay. Plaintiff's counsel, directly upon the case being called on for hearing, and before the case had in any way been gone into, applied (under s. 43 of Act X. of 1877, Civil Procedure Code) for leave to reserve his remedies under the mortgage, taking then only a money-decree—an application which, it is provided by that section, must be made "before the first hearing." *Held* that the application was not too late. The said mortgage was dated 16th February 1870, and the plaintiff in this suit was filed on the 28th April 1881. The plaintiff maintained that he was not time-barred, as he had twelve years within which to bring the suit under art. 132 of sch. 2 of Act XV. of 1877. *Held* that the plaintiff was too late in bringing a suit for a money-decree on the promise to pay in the mortgage, inasmuch as the article referred to was meant to apply to suits brought to enforce against the property payment of "money charged upon immoveable property," and not, under any circumstances whatever, to a suit for a mere money-decree.—*Pestonji Bezonji v. Abdool Rahiman Bin Shaik Budoo*, I. L. R., 5 Bom. 463. [June 28, 1880.]

AT the close of the Bengali year 1283, which was on the 11th April 1877, the defendant owed to the plaintiff, his landlord, the rents of his holding for the years 1281, 1282, and 1283. The plaintiff, in the month of April 1878, before the close of the year 1284, instituted a suit for the rent for 1281 only, and obtained a decree. On the 10th April 1879, he instituted another suit for recovery of the rents for the years 1282, 1283, 1284. *Held* that the claim for the years 1282 and 1283 was barred under s. 43 of the Code of Civil Procedure. The cases of *Raja Sutto Churn Ghosal v. Ohlay Nund Das* (2 W. R., Act X., Rul. 31), *Ram Soondar Sein v. Krishno Chunder Goopto* (17 W. R. 380), and *Kristo Kinker Puramanik v. Ramdhan Chattangia* (24 W. R. 326), are overruled by s. 43 of Act X. of 1877.—*Taruck Chunder Mookerjee v. Panchu Mohini Debye*, I. L. R., 6 Cal. 791. [Feb. 17, 1881.]

THE plaintiffs sued the defendants for possession of the land upon which certain trees stood, and for such trees, stating that on the 19th June 1879 the defendants had interfered with their possession of such trees, and had wrongfully taken the fruit thereof. The plaintiffs subsequently sued the defendants for the value of the fruit upon such trees, alleging that on the 19th June 1879 the defendants had wrongfully taken such fruits. *Held* that, as the cause of action, i.e., the taking of such fruit, was in both suits identical, and the plaintiffs not having claimed the value of such fruit as mesne-profits in the first suit, the second suit was barred by the provisions of s. 43 of Act X. of 1877.—*Debi Dial Singh v. Ajaib Singh*, I. L. R., 3 All. 543. [Mar. 7, 1881.]

ACCORDING to the terms of a mortgage, possession of the mortgaged property was to be delivered to the mortgagee, and he was to take the mesne-profits. The mortgagor refused to deliver possession of the property, and the mortgagee sued him to enforce specific performance of the contract to deliver possession, and obtained a decree. At the time this suit was brought, the mortgagee had been kept out of possession of the property for two years, during which time the mortgagor had taken the mesne-profits. The mortgagee subsequently sued the mortgagor to recover the mesne-profits of the mortgaged property for those two years. *Held* that, as the mortgagee might in the former suit, in addition to seeking the specific performance of the mortgage-contract, have asked for such mesne-profits by way of compensation for the breach of it, and as the claim for possession and mesne-profits was in respect of the same cause of action, viz., the breach of the contract to give possession, the second suit was barred by the provisions of s. 43 of Act X. of 1877.—*Lalji Mat v. Hulasi*, I. L. R., 3 All. 660. [Mar. 26, 1881.]

IN 1876 accounts were stated between B and D, and a balance of Rs. 800 was found to be due from D to B. D gave B an instrument whereby he agreed to pay the amount of such balance in four annual instalments of Rs. 200. B at the same time noted in his account-book that such balance was "payable in four instalments of Rs. 200 yearly."

In July 1879, B sued D upon such instrument for the balance of the first instalment. The Court trying this refused to receive such instrument in evidence on the ground that it was a promissory note, and as such was improperly stamped. Thereupon B applied for, and obtained, permission to withdraw from the suit with liberty to bring a fresh one for the original debt. In October 1879, B again sued D, claiming the balance of the first and second instalments, basing his claim upon the note made by him in his account-book. He obtained a decree in this suit for the amount claimed by him. In 1880, B again sued D, claiming the amount of the third instalment, again basing his claim upon such note. *Held* by Spankie, J., that the suit last-mentioned was barred by the provisions of s. 43 of Act X. of 1877, inasmuch as B should, in the second suit brought by him against D, have claimed the balance of the money found due from D to him upon the accounts stated between them, instead of claiming the balance of the instalment due. *Held* by Oldfield, J., that such suit was not so barred, the cause of action therein and in the former suit being different. *Held* by the Court that the agreement by D to pay the balance found due from him to B on accounts stated between them in instalments of Rs. 200 annually could not be proved by the note made by B in his account-book, but could only be proved by the promissory note.—*Benarsi Das v. Bhikhari Das*, I. L. R., 3 All. 717. [April 4, 1881.]

A MORTGAGEE had two remedies in respect of the mortgagor's breach to pay the stipulated interest at the time fixed by the contract of mortgage, one being a suit on foreclosure-proceedings to convert the mortgage into a sale, and the other a suit to recover his money against his debtor by enforcement of his lien against the mortgaged property. He sued for the first remedy in respect of such breach, omitting the second. His suit was dismissed on the ground that he was not entitled to such remedy until the expiration of the mortgage-term. He afterwards sued for the second remedy. *Held* that inasmuch as the mortgage was not, at the time of his suing for the first remedy, "a person entitled to more than one remedy," not being "entitled" to the first, but only to the second, his omission at that time to sue for the second remedy was not, under s. 43 of Act X. of 1877, a bar to his afterwards suing for it.—*Piari v. Khiali Ram*, I. L. R., 3 All. 857. [June 20, 1881.]

J HAD a right to share in a certain estate, as an heir to her father, and also as an heir to her brother. She transferred such right by sale to H. H sued S, who had acquired the whole estate by purchase at sales in execution of decrees against the other heirs of J's brother, for J's share as one of her brother's heirs in such estate, and obtained a decree. H then sued S for J's share as one of the father's heirs in such estate. *Held* that H was debarred from bringing the second suit by the provision of s. 43 of Act X. of 1877.—*Shafkat-un-nissa v. Shib Sahai*, I. L. R., 4 All. 171. [Dec. 20, 1881.]

A KARNATAN of a Malabar tarwad, having a right at any time to demand restoration of the property of the tarwad in the hands of the anandravan, is not debarred by s. 13 or s. 43 from bringing a second suit to recover lands in the wrongful possession of an anandravan, either by the fact that in a former suit between the same parties the karnavan only laid claim to some of the lands sued for, or by the fact that the former suit was dismissed upon the joint petition of the parties, alleging a compromise and a surrender of the lands which, as a fact, were not surrendered, but wrongfully retained by the anandravan. An anandravan has no right to the value of improvements effected by him on tarwad property upon surrender to the karnavan when such improvements are not made with private funds.—*Uramkumārath Kannan Nayar v. Uramkumārath Tenju Nayar*, I. L. R., 5 Mad. 1. [Jan. 23, 1882.]

THE plaintiffs brought a suit to have themselves declared entitled to an account, and obtained such a declaratory decree without asking for, or obtaining, any consequential relief. The defendants took no steps to render an account, and the plaintiffs brought another suit against them "for the amount of such Company's papers and other debts that might be found due by the defendant on an adjustment of accounts." *Held* that the plaintiffs were not barred from bringing such suit, s. 15 of Act VIII. of 1859 being intended to modify the provisions of s. 7 of the same Act. *Tulsi Ram v. Gunga Ram* (I. L. R., 1 All. 252) followed and approved.—*Kalidhun Chutpadhya v. Shiba Nath Chutpadhya*, I. L. R., 8 Cal. 483. [Mar. 11, 1882.]

IF a person intentionally omit to sue for any portion of his claim, the provisions of s. 43 of Act X. of 1877, as well as the provisions of s. 7 of Act VIII. of 1859, bar the institution of a second suit for the portion so omitted. So that, where a family property consisted of lands as well as debts, and the plaintiff at first sued for a partition of debts only, and then compromised and withdrew the suit without the permission of the Court, it was held that his second suit to demand a partition of the whole property was not maintainable.—*Ukhé v. Dagé*, I. L. R., 7 Bom. 182. [Mar. 28, 1882.]

WHERE a previous suit for a declaration of title and confirmation of possession of certain land has been dismissed on the ground that the plaintiff was not in possession at the time of filing the suit, a subsequent suit on the same title for recovery of possession of the land is not barred under s. 43. *Moonshee Buzloor Ruheem v. Shumsoonissa Begum* (11 Moore's I. A. 551) discussed.—*Jibunti Nath Khan v. Shib Nath Chuckerbutty*, I. L. R., 8 Cal. 819. [Mar. 29, 1882.]

ON the 27th Joist 1286 F. S. (2nd June 1879), the plaintiff brought a suit to recover damages for the breach of a contract on the part of the defendant, for not having made over possession to him of certain leasehold properties, the damages claimed being for the profits accrued due for the year 1283 F. S. (1875-6). In this suit he obtained a decree. On the 21st Joist 1287 F. S. (14th June 1880), the plaintiff brought another suit against the defendant to recover damages for the profits accrued for the years 1284, 1285, and 1286 F. S. (1876-7 to 1878-9). Held that the plaintiff should have included the damages for the years 1284 and 1285 (1876-7 and 1877-8) in his former suit, and that he was debarred by s. 43 of Act X. of 1877 from including in his second suit any portion of his claim for damages which had accrued due at the time of his first suit, and for which he had omitted to sue; but that he was entitled to recover damages for the year 1286 (1878-9). *Taruck Chunder Mookerjee v. Panchu Mohini Debya* (I. L. R., 6 Cal. 791) followed.—*Sheo Shunkur Sahoy v. Hriday Ngrain*, I. L. R., 9 Cal. 143. [April 14, 1882.]

UNDER s. 7, read with ss. 8, 9, and 10 of Act VIII. of 1859, a plaintiff suing for mesne-profits of land is not precluded from afterwards maintaining a suit for possession of such land. *Pratap Chandra Burua v. Ram Swarnamayi* (4 B. L. R. 113) commented on.—*Monohur Lal v. Gouri Sunkur*, I. L. R., 9 Cal. 283. [July 17, 1882.]

ON the 1st July 1878, there was a settlement of accounts between the plaintiff and defendants, and a debt was acknowledged due by the latter to the former; and, on the same day, the plaintiff and defendants entered into a trading partnership, which was carried on till August. On the 30th September the defendants extorted a release from the plaintiff, whereby the plaintiff's claims against them, arising out of the two transactions mentioned, and all other transactions between them, were released. On the 23rd November the plaintiff brought a suit against the defendants, and, in the plaint, after stating the fact of the settlement of 1st July 1878, the balance found due therein to the plaintiff, the extortion of the release, and the misappropriation of the sums due to the plaintiff by the defendants as the cause of action, prayed for cancellation of the release, and for recovery of the amount due to the plaintiff by the defendants under the settlement of 1st July 1878. Held, in a suit to wind up the partnership of July and August 1878, that the plaintiff was not bound by s. 43 of the Code of Civil Procedure to have included in his former suit his claim arising out of that partnership, and that the former suit, being in substance a suit upon the account stated on 1st July 1878, and not for damages for extorting the release, was no bar to the present suit.—*Subbayya v. Vekantésappa*, I. L. R., 6 Mad. 49. [Sep. 4, 1882.]

WHEN money is due on two or more bonds at the time of the institution of a suit, and the bonds appear to have been originally passed in respect of one claim, it is not incumbent upon the plaintiff to sue upon both bonds in one action. There is nothing in s. 43 of the Code of Civil Procedure which would justify the Court in going behind the bonds to consider the circumstances out of which they sprung, albeit those circumstances might themselves at the time have constituted a cause of action. There is no provision in the Mofussil Small Cause Courts Act (XI. of 1865), similar to s. 34 of the Presidency Small Cause Court Act (IX. of 1850), which forbids a plaintiff's dividing any cause of action for the sake of bringing two or more suits in the Small Cause Courts of the Presidency.—*Umed Dholchand v. Pir Sahab Jivá Miyá*, I. L. R., 7 Bom. 134. [Jan. 16, 1883.]

IN 1868 B made, it was alleged, a gift of a zamindari estate to K. In 1869 B died, and K's name was recorded in the revenue-registers in the place of B's name in respect of the estate. In 1870 K died, and her daughter S applied to have her name recorded in the revenue-registers in respect of the estate. M, the illegitimate son of B, objected, claiming to have his name recorded. His objection having been disallowed, and S's name having been recorded, M, in 1876, sued S for a declaration of his proprietary right to the estate, and, on the 29th June 1878, obtained such declaration. In January 1880, M sold a moiety of the estate, and, in December 1880, S sold the entire estate. In February 1881, M's transferees sued S and her transferees for possession of the moiety of the estate transferred to them by M. Held by the Full Bench (Stuart, C.J., dissenting) that such suit was not barred by the provisions of s. 7 of Act VIII. of 1859 by reason that M had omitted to claim in the suit of 1876 possession of the estate. *Darbo v. Keesho Rai* (I. L. R., 2 All. 356), and *Kalidhan Chutturpadhya v. Shiba Nath Chutturpadhya* (I. L. R., 3

Cal. 483), followed. *Held* also that the possession of S and her transferees could be considered adverse only from the date of the decree of the 29th June 1878, declaring M's proprietary title to the estate. *Radha Gobind Roy v. Inglis* (7 C. L. R. 364; 3 Suth. P. C. C. 809) referred to. *Held* by Stuart, C.J.—That such suit was barred by the provisions of s. 7 of Act VIII. of 1859 by reason of such omission. *Derbo v. Kesho Rai* (I. L. R., 2 All. 356) distinguished. The meaning of the term "relief" explained, and the distinction between it and the term "cause of action" pointed out.—*Sarauti v. Kunj Behari Lal*, I. L. R., 5 All. 345. [Feb. 22, 1883.]

HELD by the Full Bench (Stuart, C.J., dissenting) that the Courts of Revenue in the North-Western Provinces, in those matters of procedure upon which the Bent Act (XII. of 1881) of those Provinces is silent, are governed by the provisions of the Civil Procedure Code. The principle of decision in *Nilmoni Singh Deo v. Taranath Mukerjee* (I. L. R., 9 Cal. 295) followed. *Held*, therefore, that the procedure provided by ss. 43 and 373 of the Civil Procedure Code is applicable to suits tried under the N.-W. P. Bent Act, 1881.—*Madho Prakash Singh v. Murli Manohar*, I. L. R., 5 All. 406. [Mar. 17, 1883.]

IN 1876, K sued M on a bond, dated 25th December 1869, for Rs. 5,000, by which certain land in the district of South Tanjore was hypothecated as security for the debt, and obtained a decree on the 6th of April 1876 for the sale of the lands, which he purchased on the 17th August 1876 for Rs. 6,000. K then discovered that part of the land hypothecated, situated within the jurisdiction of the Subordinate Court at Kumbakonam, had been acquired by a railway company under the Land Acquisition Act in 1874, and that the compensation, Rs. 560 (claimed by M's mother, who sold the land to the company), was lodged in the treasury of Kumbakonam in the name of M's mother. K having applied to the Subordinate Court for an order for payment out of this sum, the Court, by order dated 28th February 1880, directed that the question of title to the money should be decided by suit. K then sued M as the sole heir of his deceased mother in the District Munsif's Court of Tiruvadi (where M resided) for a declaration of right to, and to recover, the said sum of Rs. 460. The suit was filed on the 4th September 1880. On the 16th April 1880, M assigned his interest in the money sued for to V, who was made defendant in the suit on his own application, and pleaded (1) that the Court had no jurisdiction, as both the money and the land which it represented were, and he (V) resided, without the Munsif's Court's jurisdiction; (2) that the land having been acquired by the railway company in 1874, before the suit upon the bond was filed, this suit was barred by s. 43 of the Code of Civil Procedure; (3) that this suit was barred by limitation, inasmuch as more than three years had elapsed since the money was paid by the railway company. *Held* (1) that the suit was for money, and that V, not having applied to stay proceedings under s. 20 of the Code of Civil Procedure, must be held to have acquiesced in the jurisdiction of the Court; (2) that K not having known, at the date of his suit on the bond of the acquisition of the land by the railway company, this suit is not barred by s. 43 of the Code of Civil Procedure; (3) that the suit was not barred by limitation, as the compensation was awarded to M's mother either through fraud on her part or mistake on the part of the Collector, and K did not become aware of the fraud or mistake until within six years of the suit (arts. 95, 96, of sch. 2 of the Indian Limitation Act).—*Viraragava v. Krishnasami*, I. L. R., 6 Mad. 314. [April 6, 1883.]

WHERE there has been a suit between an agriculturist-mortgagor and his mortgagee for an account merely, a subsequent suit for possession on payment of the money declared to be due is barred under either s. 13 or s. 43 of the Code of Civil Procedure.—*Bhau Balaji v. Hari Nilkanthray*, I. L. R., 7 Bom. 377. [April 17, 1883.]

A BOND provided for the repayment of a loan with interest by a stated time. In default of payment by that time it was provided that the loan might be added to an existing mortgage for a term of years, and repaid at the end of the term, together with the mortgage-debt. After the expiration of the time fixed for the repayment of the loan, the obligee sued and obtained a decree for the interest which had accrued due at the date of the suit. He now sued for the further interest which had since become due. *Held* that the second suit was not barred by s. 43 of the Code of Civil Procedure, for that the first suit being for interest merely, and not for principal and interest, which were then both due, the plaintiff must be taken to have elected, under the bond, to add the principal sum to the previously existing mortgage-debt, in which case he forfeited nothing by suing merely for arrears of interest as they became due.—*Shri Shailaja v. Balaja Lokanna*, I. L. R., 7 Bom. 446. [July 11, 1883.]

PETITIONERS filed two suits in a Small Cause Court on the same day to recover rents due for two successive years under the same lease. The sum of the two claims exceeded the pecuniary limit of the Court's jurisdiction. The suit for the rent of the first year

was dismissed under s. 43 of the Code of Civil Procedure, on the ground that the claim ought to have been included in the suit for the second year's rent. *Held* that, as petitioners had no intention of abandoning either claim, the proper course was to allow them to withdraw both suits, and file a fresh suit in a competent Court.—*Alaju v. Abdoola*, I. L. R., 8 Mad. 147. [Dec. 5, 1884.]

S. 7 of Act VIII. of 1859 required that every suit should include the whole of the claim arising out of the cause of action, meaning the whole of the claim arising out of the cause of action upon which the suit was brought, not that every suit should include every cause of action, or every claim, which the plaintiff had against the defendant. Accordingly, where a plaintiff had sued to obtain his share of an estate in land, in consequence of having been wrongfully dispossessed by the defendant, whom he afterwards in the present suit sued for his share of personal property, being entitled to both under a will, it was *held* that the subsequent suit was not barred by reason of the non-claim in the prior one. The claim in respect of the personality had not arisen out of the cause of action, which existed in consequence of the wrongful dispossession; the case was not like one of the conversion of several things; and the causes of action were distinct.—*Munshi B. Zoor Rahim v. Shansoonissa Begum* (11 M. I. A. 553) referred to.—*Pittapur Raja v. Suriya Rau*, I. L. R., 8 Mad. 520. [Feb. 25, 1885.]

A RECORDED co-sharer of a mahál sued the lambardár for his share of the profits of the mahál for the year 1286 fasli. At the time of the institution of the suit the profits for 1287 and 1288 fasli also were due, but no claim was then made in respect of them. The suit was struck off on account of the non-appearance of the parties under s. 140 of Act XII. of 1881 (N. W. P. Rent Act), with leave to the plaintiff to bring a fresh suit. Subsequently, the plaintiff brought a suit against the same defendant for his share of the profits of the mahál for 1287 and 1288 fasli. *Held* that the suit was not barred by the provisions of s. 43 of the Civil Procedure Code. *Held* also that the Courts below had properly refused to deduct from the plaintiff's claim as "village-expenses," within the meaning of s. 93 (A) of the Rent Act, certain charges on account of the expenses of cultivation of *his* land held in partnership by the plaintiff and the defendant.—*Mulchand v. Bhikari Das*, I. L. R., 7 All. 624. [Mar. 6, 1885.]

A TESTATOR bequeathed all his property to his nephew, in which he included the share of his brother's widow in the ancestral property; but at the same time made a suitable provision for her maintenance and worship. The widow at first sued for and obtained the allowance allotted to her under the will, and afterwards brought a suit for a share in the ancestral property. *Held* that, although, having regard to the doctrine of election (Succession Act, s. 172), the widow was precluded from again bringing a suit for a share of the ancestral property, it could not be said that the suit was barred under the provisions of s. 43 of the Code of Civil Procedure, inasmuch as the two claims were distinct and indeed inconsistent, and did not arise out of the same cause of action.—*Pramada Dasi v. Lakhi Narain Mitter*, I. L. R., 12 Cal. 60. [June 12, 1885.]

A DECREE for damages in a suit instituted on 2nd June 1879 (27th Joist 1286 F.) on a breach of contract for not having given possession of land according to the terms of a *zar-i-peshgi patta*, awarded the profits of the land for 1283 F., which would have been received by the plaintiff had the contract been performed. The decree-holder then brought the present suit (14th June 1880 or 21st Joist 1287 F.) for damages for the breach of the same contract, claiming the profits accrued during 1284, 1285, and 1286 F. (1876-77 to 1878-79). *Held* that the High Court had rightly decided that, in regard to Act X. of 1877, s. 43, the plaintiff could not recover so much of the profits as had already accrued at the date of the institution of the prior suit, inasmuch as the claim in respect of such profits might have been included therein, *viz.*, the profits for the two years 1284 and 1285 F., which had expired when that suit was brought.—*Madan Mohan Lal v. Lal Sheosanker Sahai*, I. L. R., 12 Cal. 482. [July 1, 1885.]

THE plaintiff sued under the provisions of Act X. of 1859 to recover arrears of rent for the years 1287, 1288, and 1289 (1880-82), after having obtained a decree for the rent due for the year 1286 (1879) in a suit instituted after the rent for the year 1289 (1882) had become due. *Held* that the provisions of s. 43 of the Civil Procedure Code applied, and that the second suit was consequently barred. *Madho Prakash Singh v. Murli Manohar* (I. L. R., 5 All. 405) cited and approved; *Taruck Chunder Mookerjee v. Panchu Mohiny Debya* (I. L. R., 6 Cal. 791) cited.—*Adhirani Narain Kumari v. Raghu Mahapatro*, I. L. R., 12 Cal. 50. [July 22, 1885.]

WHEN a suit for a declaration of title and confirmation of possession of certain land has been dismissed on the ground that the plaintiff was not in possession of the land at the time of instituting the suit, a subsequent suit on the same title to recover possession

is not barred under s. 43 of the Civil Procedure Code. A cause of action consists of the circumstances and facts which are alleged by the plaintiff to exist, and which, if proved, will entitle him to the relief or to some part of the relief prayed for, and is to be sought for within the four corners of the plaint.—*Jibunti Nath Khan v. Shib Nath Chucker-buty* (I. L. R., 8 Cal. 819) followed.—*Nonoo Singh Monda v. Anand Singh Monda*, I. L. R., 13 Cal. 291. [Aug. 14, 1885.]

Per GARTH, C.J.—A claim for the price of goods sold is a cause of action of a different nature from a claim for damages for non-acceptance of goods pursuant to a contract. Such claims, therefore, although arising under one and the same contract, may be sued upon separately, s. 43 of the Code of Civil Procedure notwithstanding. *Per Wilson, J.*—Where there is one contract for the purchase of goods, and the purchaser takes some of the goods, but breaks his contract in part by not paying for the goods he takes, and in part by not taking and paying for the remainder, and both breaches occur before any suit is brought, the claim of the person suing is one arising out of one cause of action; and the whole claim must be included in one suit. —*Anderson, Wright, and Co. v. Kalagarja Surjinarain*, I. L. R., 12 Cal. 339. [Sep. 5, 1885.]

N BEING mortgagee in possession of five-eighths of a pangu (share) of certain land—security for a debt of Rs. 400—hypothecated his rights to M in 1876. In 1878 K bought two-eighths of the said five-eighths from the mortgagor. In 1879, K sued N, claiming possession of his two-eighths on payment of Rs. 400, and obtained a decree and possession thereof. Pending this suit, N assigned his mortgage to M. M was aware of the suit, and K was aware of the assignment when he paid Rs. 400 into Court for N. In 1883, K bought the remaining three-eighths from the mortgagor, and sued N and M to recover possession thereof. M pleaded that the suit was barred by s. 43 of the Code of Civil Procedure, inasmuch as K might have recovered the five-eighths in the suit against N. Held that this plea was bad. M also pleaded that he had a valid mortgage over three-eighths. Held, by *Muttusami Ayyar, J.*, that, if the assignment of the mortgage by N to M was a real transaction, this plea was good. *Per Muttusami Ayyar, J.*—The doctrine of *lis pendens* can only be relied on as a protection of the plaintiff's right to property actually sought to be recovered in the suit.—*Brahmaniyaki v. Krishna*, I. L. R., 9 Mad. 92. [Sep. 25, 1885.]

UPON a settlement of accounts between the plaintiff and defendants, Rs. 3,985-6-9 was found due by the defendants, who agreed to pay the same. They gave to plaintiff an order on their agents to pay Rs. 2,500 from the profits of certain land, and promised to pay the balance within a month. Plaintiff filed two suits, one for Rs. 2,500, and the other for the balance of the debt. Defendants pleaded that both suits should be dismissed, as brought in contravention of the requirements of s. 43 of the Code of Civil Procedure. The Lower Courts held that there were two distinct causes of action, and decreed both claims. Held, on second appeal, that plaintiff had only one cause of action, and that the decree in one of the suits must be reversed.—*Appasami v. Ramasami*, I. L. R., 9 Mad. 279. [Mar. 8, 1886.]

IN 1874 the plaintiff leased certain immoveable property to the defendant, and the latter executed a deed by which he covenanted to pay the annual rent and fulfil other conditions of the lease, and gave security in Rs. 3,000 by mortgage of landed property. In 1874 the plaintiff obtained decree in the Revenue Court for arrears of rent, and the decrees were partially satisfied and then became barred by limitation. In 1884 the plaintiff brought a suit to recover the balance due by enforcement of the mortgage security against the purchasers of the mortgaged property. Held that the plaintiff had two separate rights of action, one on the contract to pay rent, and the other on the mortgage security; that he could only enforce the first by a suit in the Revenue Court for arrears of rent, and the second by suit in the Civil Court; and consequently there could be no bar to the latter suit by reason of the suit instituted in the Revenue Court, with reference to s. 43 of the Civil Procedure Code. Held also that when the plaintiff obtained his decrees for rent the mortgage security did not merge in the judgment-debts, nor did he lose his remedy on it; that the two rights were distinct, and the right of action on the mortgage security was not lost because the execution of the decrees for rent was time-barred, the only effect of which was that the debt was not recoverable in execution, but the debt existed nevertheless so far as to enable the amount secured by mortgage to be recovered by suit in the Civil Court, so long as such suits were not barred by limitation. *Emam Mumtaz-ood-deen Mahomed v. Rajgoomar Dass* (15 B. L. R. 408), referred to. Held also that the amount which the plaintiff could recover by enforcement of the mortgage security was limited to Rs. 3,000.—*Chunni Lal v. Banasput Singh*, I. L. R., 9 All. 23. [Aug. 2, 1886.]

ON the 5th September 1874, R, a Hindu, and his sons, borrowed Rs. 5,000 from V, and mortgaged to him certain land, items 1, 2, and 3. On the 7th September 1874, V borrowed Rs. 5,000 from R, N, and mortgaged his rights in items 1 and 2 and land of

his own to R N. In 1877 R N bought, at a sale in execution of a decree against R, the share of R in the said items 1 and 2 subject to the mortgage created by R on 5th September 1874, and to another mortgage created by R on 11th January 1875. In 1880, R N sued V and the sons of R for arrears of interest due under his mortgage-bond. This suit was withdrawn with liberty to bring a fresh suit for the principal and interest due under the bond. In 1885, R N sued the sons of R and V to recover principal and interest due under his mortgage-bond. V pleaded that, as R N had bought R's share in items 1 and 2 subject to the mortgages created by him, R N's rights as mortgagee were merged in his rights as purchaser. R's sons pleaded, *inter alia*, that the suit was barred by the provisions of ss. 43 and 373 of the Code of Civil Procedure. *Held* that the claim of R N was neither merged nor barred.—*Venkata v. Ranga*, I. L. R., 10 Mad. 160. [Jan. 11, 1887.]

44. Rule a.—No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immovable property, or to obtain a declaration of title to immovable property, except—

Extending to Provincial S. C. Courts, except rule A.

(a) claims in respect of mesne-profits or arrears of rent in respect of the property claimed,

(b) damages for breach of any contract under which the property or any part thereof is held, and

(c) claims by a mortgagee to enforce any of his remedies under the mortgage.

Rule b.—No claim by or against an executor, administrator, or heir as

Claims by or against executor, administrator, or heir. such, shall be joined with claims by or against him personally, unless the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator, or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

THE plaintiff sued for specific performance of an agreement, in writing, which set forth (*inter alia*) that the defendants had agreed to sell, &c., under certain conditions as agreed upon. The defendants alleged that the written agreement did not contain the whole of the agreement between the parties, and offered parol evidence in support of their contention. *Held* (reversing the judgment of Wilson, J.) that the parol evidence was admissible to show what was meant by the clause "certain conditions as agreed upon." *Per* Pontifex, J. (Garth, C.J., dissenting)—The evidence was admissible under proviso 1, s. 92 of the Evidence Act (I. of 1872). Discussion as to the meaning of s. 92 of the Evidence Act and of ss. 17, 22, and 26 of the Specific Relief Act. *Per* Pontifex, J.—It is of the essence of specific performance that part only of an agreement should not be performed. Part of the purchase-money had been advanced by the plaintiffs to the defendants, for which the defendants had given their promissory notes; and the plaint contained a prayer that the defendants be ordered to pay over the amount of the notes. *Held* (affirming the decision of Wilson, J.) that there was no misjoinder of causes of action within the meaning of s. 44, rule a, of the Code of Civil Procedure (Act X. of 1877).—*Cutts (G. M.) v. Brown (T. F.)*, I. L. R., 6 Cal. 328. [Aug. 11, 1880.]

IN the mufassal of this presidency the transfer of the ownership of immovable property to a vendee who has obtained a decree ordering the specific performance of the contract of sale to himself does not wait for the execution of a conveyance—even if the vendor is required, as he seldom is, to execute such a conveyance—but is affected by the passing of the decree itself, coupled with the payment of the purchase-money. A entered into an agreement with B for the purchase of moveable and immovable property, and paid a deposit. Under such an agreement, by s. 85 of the Indian Contract Act, the ownership of the moveable property would not pass before the transfer of the immovable property. B, instead of conveying to A the property agreed to be conveyed to him, conveyed it to C, and put him, C, in possession. A brought a suit against C and B, and obtained a decree, setting aside the conveyance to C, and ordering B specifically to perform his contract and execute a conveyance of the property to himself, A. This decree was confirmed on appeal. B refusing to execute the conveyance to A, the conveyance was executed by the Court under the provisions of s. 202 of Act VIII. of 1859. C still detaining possession of the moveable and immovable property in question, A brought this suit against him to recover possession

of the same. The suit was brought within three years of the final decree of the Court of Appeal in the former suit, ordering a conveyance of the property to be executed to A, but not within three years of the date of agreement to purchase, and it was contended that as to the moveable property the suit was time-barred. *Held* that the suit for the possession of the moveable property was not time-barred, as the right to possession of both moveable and immoveable property accrued to A, at the earliest, on the date of the final decree for specific performance of the agreement of sale, and it was from that time that the "detainer's possession" first became unlawful under art. 49, sch. 2 of Act XV. of 1877. An objection that the plaintiff has joined together causes of action which, by s. 44 of the Civil Procedure Code, may not be joined together without leave first obtained, is taken too late if it is taken for the first time in the Court of Appeal after the case has been already heard on its merits.—*Dhondiba Krishnaji Pátel v. Rámchandra Bhagvata*, I. L. R., 5 Bom. 554. [Mar. 2, 1881.]

S. 44 of the Code of Civil Procedure, 1877, does not forbid the joinder of several causes of action entitling the plaintiff to the recovery of immoveable property, but a joinder with such causes of action of other causes of action of a different character except in the cases therein specified.—*Chidambara Pillai v. Rámásimni Pillai*, I. L. R., 5 Mad. 161. [April 4, 1882.]

A PLAINTIFF sued on the 28th February 1881 for specific performance of a contract entered into on the 1st March 1878 by defendant No. 1, and joined in that suit as a defendant a third person, who alleged that he was the owner of the property, the subject of the contract, seeking to obtain possession and other relief as against such third person, stating that he was a benamidár of defendant No. 1. Such third person contended in his written statement that the suit was multifarious, but the point was not decided in the lower Courts. On second appeal, such third person contended that the discretion given to the Court under s. 22 of the Specific Relief Act ought not to be exercised, as the plaintiff had slept on his rights for nearly three years; and also contended that the suit was multifarious, and that he ought not to have been made a party thereto. *Held* that although the principle of the objection, as to the delay of the plaintiff in bringing his suit, was an important one, and one which ought to be considered by the Courts in the exercise of their judicial discretion under s. 22 of the Specific Relief Act, yet the point not having been taken in the Courts below, and there being nothing on the record to lead the Court to presume that the ordinary rule applicable to suits of this nature had been disregarded in the Courts below, the objection ought not, under the circumstances, to be allowed to prevail in second appeal. *Held* also, *per* Mitter, J. (Pigot, J., dissenting), that as regards the objection to the suit for misjoinder, and under s. 44 of the Code of Civil Procedure, the Appeal Court was precluded by s. 578 of the Code from reversing the decree of the lower Court, as the error (if an error at all) could not affect the merits of the decision. *Held* also that the principle laid down in the cases of *De Houghton v. Money* (I. L. R., 2 Cal. App. 166), and *Luckumsey Ookerda v. Pazulla Cassumbhoy* (I. L. R., 5 Bom. 177), is only applicable where, from the plaintiff's case, it appears that a third party, not a party to the contract, has a distinct interest from that of the other parties to the contract, which interest is sought to be declared null and void. *Mokund Lall v. Chotay Lall*, I. L. R., 10 Cal. 1061. [Sep. 2, 1884.]

No appeal lies under any of the provisions of s. 588 of the Civil Procedure Code from an order under s. 44, rule a, rejecting an application for leave to join another cause of action with a suit for the recovery of immoveable property. In a plaint filed in the Court of a Subordinate Judge the plaintiff claimed to recover possession of a house, together with some grain which was stored in it. The plaintiff applied to the Subordinate Judge for leave under s. 44, rule a, of the Civil Procedure Code, to join the claim for grain with the claim for possession of the house. The Subordinate Judge refused leave, and returned the plaint, with directions that the plaintiff should institute two suits, for recovery of the house and the grain respectively, in the Court of the Munsif. *Held* that the Subordinate Judge's order was substantially an order rejecting the plaint, on the ground that the plaintiff had joined a cause of action with a suit for recovery of immoveable property; that, although this might have been a misapplication of s. 44, rule a, of the Code, its effect was to reject the plaint; that such an order was a decree with reference to the definition in s. 2, and was appealable as such to the District Judge; and that, therefore, a second appeal lay in the case to the High Court, and that Court was not competent to interfere in revision under s. 622.—*Bandhan Singh v. Solhu*, I. L. R., 8 All. 191. [Feb. 18, 1886.]

AN objection to the attachment and sale of certain immoveable property, raised by one who claimed to have purchased the same at a sale in execution of a prior decree, was disallowed on the ground that, under the prior decree, the rights of one only of the present

judgment-debtors had been sold and purchased by the objector. In accordance with this order, two-thirds of the property under attachment were sold; and the objector thereupon brought a regular suit for a declaration of his right as a purchaser of the whole property in execution of the prior decree. To this suit he impleaded as defendants the decree-holder and the judgment-debtors. The suit was decreed, and in the result the decree-holder alone was compelled to pay the whole of the costs. Subsequently he brought a suit for contribution in respect of these costs, making defendants to the suit (1) R, one of his co-defendants in the previous suit, personally and as heir of A, who was another of those co-defendants; (2) N; and (3) S: these two being sued in the character of heirs of A. *Held*, with reference to a plea of misjoinder within the terms of rule 6 of s. 44 of the Civil Procedure Code, that even if there were misjoinder of parties, the first Court, having proceeded to trial of the suit, and not having rejected the plaint or returned it for amendment or amended it, should have disposed of it upon the merits, and found what A's share in the amount paid by the plaintiff was, and whether assets to that amount had come to the hands of the defendants as her heirs.—*Kishna Ram v. Rakmini Sewak Singh*, I. L. R., 9 All. 221. [Jan. 5, 1887.]

45. Subject to the rules contained in Chapter II. and in s. 44, the plaintiff may join several causes of action. plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant, or the same defendants jointly, may unite such causes of action in the same suit. Extending to Provincial S. C. Courts.

But if it appear to the Court that any such causes of action cannot be conveniently tried or disposed of together, the Court may order separate trials. Court may, at any time before the first hearing, of its own motion, or on the application of any defendant, or at any subsequent stage of the suit, if the parties agree, order separate trials of any such causes of action to be had, or make such other order as may be necessary or expedient for the separate disposal thereof.

When causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit, whether or not an order has been made under the second paragraph of this section.

IN a suit instituted against different parties, plaintiff prayed for khas possession of a four-anna share in a certain lot, or, in the alternative, for a decree for arrears of rent against the defendants, or such of the defendants as should, on inquiry, appear to be respectively liable. It appeared that plaintiff had been kept out of possession by one only of the six defendants, and that, if he was entitled to a decree for arrears of rent, another of the defendants was liable for a portion only of such arrears. *Held* (with reference to Act X. of 1877, ss. 31 and 45) that the suit was not improperly framed; that there was no objection to the prayer for alternative relief; and that the suit should not have been dismissed for joinder of causes of action.—*Janakinath Mookerjee v. Ramrunjun Cluckerbutty*, I. L. R., 4 Cal. 949. [Jan. 17, 1879.]

A STRANGER to a contract of which specific performance is sought cannot be a party to the suit. Where, therefore, the plaintiff, sued as against one defendant for specific performance of a contract to sell land, and as against another for a declaration that he was not entitled to any charge upon the said lands, *held* that the latter defendant was improperly made a party to the suit.—*Luckumsey Ookerda v. Fazulla Cassumbhoy*, I. L. R., 5 Bom. 177. [Dec. 20, 1880.]

THE sons of R and of K and of S possessed proprietary rights in two mahals of a certain mauza. P possessed proprietary rights in one of those mahals. In April 1879, the sons of R sold their proprietary rights in both mahals to G. In August 1879, the sons of K sold their proprietary rights in both mahals to G. Later in the same month the sons of S sold their proprietary rights in both mahals to N. G sued N to enforce a right of pre-emption in respect of the sale to the latter, and obtained a decree. P then sued to enforce a right of pre-emption in respect of the three sales mentioned above, so far as they related to the mahal of which he was a co-sharer, joining as defendants G and N and the vendors to them. G alone objected in the Court of first instance to the frame of the suit. That Court overruled the objection, and gave P a decree. The lower Appellate Court reversed this decree on the ground of misjoinder. *Held* that in respect of G there was no

misjoinder, but that in respect of the other defendant there was misjoinder of both causes of action and parties. Inasmuch as, however, G alone objected to the frame of the suit, and the defect did not affect the merits of the case or the jurisdiction of the Court, the lower Appellate Court ought not, regard being had to s. 578 of Act X. of 1877, to have reversed the decree of the Court of first instance by reason of such defect.—*Kalian Singh v. Gur Dayal*, I. L. R., 4 All. 163. [Dec. 14, 1881.]

DEFENDANT No. 1, the tenant of certain land at fixed rates, on the 12th November 1877, sold his interest in the land to the plaintiff. At the time of the sale the land was in the actual possession of defendant No. 2, defendant No. 1's sub-tenant, against whom, however, defendant No. 1 had obtained an order for ejectment on the 25th June preceding. On the 25th March 1878, defendant No. 1 applied a second time for the ejectment of defendant No. 2, and while this matter was pending the plaintiff endeavoured to obtain possession of the land, but was resisted by defendant No. 2. He thereupon instituted a charge of criminal trespass against the latter. This criminal proceeding was pending when, on the 14th September 1878, defendant No. 1 obtained a second order for defendant No. 2's ejectment. Under this order he obtained possession of the land, and also of the crops planted by defendant No. 2, which he sold to defendant No. 3 on the 22nd September 1878. On the 25th of the same month the plaintiff's charge of criminal trespass against defendant No. 2 was dismissed, on the ground that defendant No. 1 was in possession, and the plaintiff had never obtained possession under his purchase. Defendant No. 1 subsequently let the land to defendant No. 4. The plaintiff, alleging that three causes of action had accrued to him—*viz.*, on the 12th November 1877, the date of the sale to him, (1) on the 30th March 1878, when defendant No. 1 applied a second time for the ejectment of defendant No. 2—and (3) on the 22nd September 1878, when defendant No. 1 took possession of the land—sued defendants Nos. 1, 2, 3, and 4, claiming (1) possession of the land as against them all; (2) mesne-profits by way of damages for the year 1285 Fasli (September 1877—September 1878) as against defendants Nos. 1 and 2; (3) mesne-profits by way of damages for 1286 Fasli (September 1878—September 1879) against defendants Nos. 1 and 3; and (4) mesne-profits by way of damages for 1287 Fasli (September 1879—September 1880) against defendants Nos. 1 and 4. *Held* by the Full Bench (Mahmood, J., dissenting) that the Court of first instance had properly rejected the plaint, the suit being open to the objection that different causes of action against different defendants separately had been joined, for which procedure no sanction was to be found in the Code of Civil Procedure.—*Narsingh Das v. Mangal Dubey*, I. L. R., 5 All. 163. [Aug. 26, 1882.]

S. 26 of the Code of Civil Procedure does not authorise the joinder of plaintiffs with antagonistic claims arising out of distinct causes of action. Where one of two widows of a deceased Hindú and her adopted son sued as co-plaintiffs, claiming in the alternative either to recover the whole family-estate for the latter, if the adoption was valid, or, if the adoption was invalid, one-half of the estate for the former, *held* that the suit was bad for misjoinder. *Held* also that when such misjoinder had been allowed, and the suit decided, and an appeal brought, the Court of Appeal should dispose of the suit in the mode in which the lower Court ought to have disposed of it, by returning the plaint for amendment. *Farzand Ali v. Yusuf Ali* (I. L. R., 2 All. 669) dissented from.—*Lingammál v. Venkatammál*, I. L. R., 6 Mad. 239. [Dec. 22, 1882.]

THE plaintiffs sued for a declaration that the several alienations made by defendant No. 1 (a Hindú widow) to the other defendants were void, and that they (the plaintiffs) were entitled to the several properties after her death; also for an injunction, restraining her from making similar unlawful alienations in the future. *Held* that the suit as framed was not maintainable, inasmuch as it included within it several distinct causes of action, which, under s. 45 of Act X. of 1877, could not be joined together in the same suit. The course which should be adopted by a Court or Judge, where there has been such a misjoinder of causes of action, discussed.—*Káchár Bhoj v. Báí Ráthore*, I. L. R., 7 Bom. 289. [Feb. 22, 1883.]

TWO co-sharers of a village, holding separate shares, sold their shares separately to the same person, upon which a third co-sharer of the village sued them and the vendor jointly to enforce his right of pre-emption in respect of the sales. *Held* that the frame of the suit was bad by reason of misjoinder of defendants and causes of action, and the suit had been properly dismissed on that ground.—*Bhagwati Prasad Gir v. Bindeshri Gir*, I. L. R., 6 All. 106. [Nov. 19, 1883.]

C SUED P to recover possession of certain lands. The plaintiff and defendant were members of the same family, and at the hearing of the suit the appellants, who were also members of the family, applied to be made parties, alleging that the suit was collusive,

and that they were in possession of some of the lands which the plaintiff sought to recover, and wished to defend their possession. The Subordinate Judge granted their application, and made them co-defendants in the suit. They filed written statements setting forth their right, and time was allowed in order that the plaintiff might put in a counter statement. Before the case came on again, the Subordinate Judge had been removed, and his successor was of opinion that the causes of action, as against the original defendant P and as against the new defendants (the appellants), were different, and ought to be the subject of different suits. He accordingly dismissed the appellants from the suit under s. 45 of the Civil Procedure Code (Act XIV. of 1882), and ordered that they should bear their own costs. Held on appeal to the High Court that the order dismissing the appellants from the suit should be reversed, and that s. 45 did not apply. When the parties concerned, though in different relation, in a particular litigation, are all before the Court, and their cases have been stated, the Court, if it finds the several causes as being plaintiff and the several defendants cannot properly or conveniently be tried together, should deal with them separately as sub-suits under the title and number of the principal suit from which they spring. The dismissal of defendants added without objection, or the addition of whom has been submitted to, is not contemplated, and would tend to further needless expense. The power given by s. 45 does not extend to an order for the dismissal of defendants, and that a fresh suit should be brought against them. Such an order would not be one for the "separate disposal" of the several causes of action; it would be an order preventing the disposal of them in the suit before the Court. S. 45 is meant to apply to cases in which questions arise as to the joinder or severance of several causes of action against the same defendant. For non-joinder or misjoinder of parties provision is made in s. 32, and the plaintiff had not resisted the joinder of the appellants as defendants. The Subordinate Judge could only strike out the name of a party upon an application being made, and no such application had been made.—*Khadar Sahib v. Chotibibi*, 1. L. R., 8 Bom. 616. [July 28, 1884.]

WHERE a suit was brought by a Hindu for partition of family-property against his father, brothers, and fifteen others, to whom, it was alleged, the father had improperly alienated numerous parcels of the said property at different times, held that the better course was for the Court to have ordered, under s. 45 of the Code of Civil Procedure, separate trials to be held in respect of each alienation. If a suit brought by a Hindu to contest an alienation of family property made by his father, the onus of proving that the alienation is binding on the son lies upon those who claim the benefit of the alienation.—*Subramanya v. Sadasiva*, 1. L. R., 8 Mad. 75. [Oct. 27, 1884.]

S SUE D K for four bonds, alleging that the same had been satisfied. K had formerly sued S on two of these bonds. S had alleged in defence of that suit that those two bonds, as also the other two, had been satisfied. It was decided in that suit that not one of the bonds had been satisfied. Held by Petheram, C.J., and Oldfield, Brodhurst, and Duthoit, J.J., that the only issue in the former suit which had to be decided being whether the bonds on which that suit was brought had been satisfied or not, the second suit was, under s. 13 of the Civil Procedure Code, *res judicata* only in respect of those bonds, and not in respect of the other two bonds. The Court which tried the former suit had not jurisdiction to try the subsequent suit. Per Mahmood, J.—This being so, if the word "suit" in s. 13 were taken literally, it might, with some plausibility, be contended that there was no *res judicata* in respect of any of the bonds. The word "suit," however, must be understood to mean such a matter as might have formed the subject of a separate suit independently of the special provisions of the Civil Procedure Code, such as s. 45, which enables the plaintiff to unite several causes of action in one and the same suit. Adopting this interpretation, it was clear that the two bonds which were the subject of the former suit could not be allowed to form the subject of litigation again. As to the other two bonds, which were not the subject-matter of the former suit, they did not, in the former suit, constitute a matter "directly and substantially in issue," within the meaning of s. 13; and even if they were "directly and substantially in issue," the decision in the former suit would not support the plea of *res judicata*, because the Court which tried that suit was not a Court of jurisdiction competent to try the subsequent suit in which the plea was raised.—*Sheoraj Rai v. Kashi Nath*, 1. L. R., 7 All. 247. [Dec. 13, 1884.]

46. Any defendant, alleging that the plaintiff has united in the same suit several causes of action which cannot be conveniently disposed of in one suit, may, at any time before the first hearing, or, where issues are settled, before any evidence is recorded, apply to the Court for an order confining the suit to such of the causes of action as may be conveniently disposed of in one suit.

Extending to Provincial S. C. Courts.

47. If, on the hearing of such application, it appears to the Court that the causes of action are such as cannot all be conveniently disposed of in one suit, the Court may order any of such causes of action to be excluded, and may direct the plaint to be amended accordingly, and may make such order as to costs as may be just.

Every amendment made under this section shall be attested by the signature of the Judge.

CHAPTER V.

OF THE INSTITUTION OF SUITS.

Ditto. Suits to be commenced by plaintiff. 48. Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

Ditto. 49. The plaint must be distinctly written in the language of the Court; provided that, if such language is not English, the plaint may (with the permission of the Court) be written in English; but in such case, if the defendant so require, a translation of the plaint into the language of the Court shall be filed in Court.

Ditto. Particulars to be contained in plaint. 50. The plaint must contain the following particulars:—

- (a) the name of the Court in which the suit is brought;
- (b) the name, description, and place of residence of the plaintiff;
- (c) the name, description, and place of residence of the defendant, so far as they can be ascertained;
- (d) a plain and concise statement of the circumstances constituting the cause of action, and where and when it arose;
- (e) a demand of the relief which the plaintiff claims; and
- (f) if the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished.

In money-suits.

If the plaintiff seeks the recovery of money, the plaint must state the precise amount so far as the case admits.

In a suit for mesne-profits, and in a suit for the amount which will be found due to the plaintiff on taking unsettled accounts between him and the defendant, the plaint need only state approximately the amount sued for.

When the plaintiff sues in a representative character, the plaint should shew, not only that he has an actual existing interest in the subject-matter, but that he has taken the steps necessary to enable him to institute a suit concerning it.

Illustrations.

- (a.) A sues as B's executor. The plaint must state that A has proved B's will.
- (b.) A sues as C's administrator. The plaint must state that A has taken out administration to C's estate.
- (c.) A sues as guardian of D, a Muhammadan minor. A is not D's guardian according to Muhammadan law and usage. The plaint must state that A has been specially appointed D's guardian.

The plaintiff must show that the defendant is, or claims to be, interested in Defendant's interest and the subject-matter, and that he is liable to be liability to be shown. called upon to answer the plaintiff's demand.

Illustration.

A dies, leaving B his executor, C his legatee, and D a debtor to A's estate. C sues D to compel him to pay his debt in satisfaction of C's legacy. The plaintiff must shew that B has causelessly refused to sue D, or that B and D have colluded for the purpose of defrauding C, or other such circumstances rendering D liable to C.

If the cause of action arose beyond the period ordinarily allowed by Grounds of exemption from any law for instituting the suit, the plaintiff must Limitation-law. shew the ground upon which exemption from such law is claimed.

In all cases, whether a plaint is verified by the plaintiff or by some other person, the party verifying should state shortly what paragraphs he verifies of his own knowledge and what paragraphs he believes to be true from the information of others.—*In re Upendro Lall, Bose, I. L. R., 6 Cal. 675. [Sep. 3, 1880.]*

It is not necessary to obtain the leave of the High Court under cl. 12 of the Letters Patent to sue to set aside a decree of that Court, made upon a compromise to which the plaintiff has been induced by the misrepresentation of the defendant to agree, even when it appears from the plaint that the defendants are outside the jurisdiction of the Court. To describe the plaintiff as residing in Chitpore Road in the town of Calcutta, is not a sufficient description, under s. 50 of the Civil Procedure Code, of his place of abode; nor is it sufficient under that section to describe the defendant as formerly of Calcutta, without alleging that the plaintiff has been unable to ascertain his place of residence more definitely. Where the plaint alleges matter which cannot be personally known to the person making the verification, and which is not stated to be an information and belief, a verification which does not distinguish how much is true to the knowledge of the person making it, and what is alleged to be true on information and belief, does not fulfil the requirements of s. 52.—*Bibee Solomon v. Abdool Azeez, I. L. R., 6 Cal. 687. [Feb. 7, 1881.]*

THERE is no law at present in force in the mufassal which obliges a person claiming under a will to obtain probate of the will, or otherwise establish his right as executor, administrator, or legatee before he can sue in respect to any property which he claims under the will. In any suit or proceeding instituted by him, it is for the Court in which the suit or proceeding is pending to determine, for the purposes of such suit or proceeding, whether the will is genuine and valid, and confers upon the plaintiff or applicant the right which he claims.—*Bhagvansang Bháráji v. Becharás Harjivándá, I. L. R., 6 Bom. 73. [June 28, 1881.]*

51. The plaint shall be signed by the plaintiff and his pleader (if any), and shall be verified at the foot by the plaintiff, or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case : Extending to Provincial S. C. Courts.

Provided that, if the plaintiff is, by reason of absence or for other good cause, unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf.

A PLAINT, signed by a person holding a general power-of-attorney to sue on behalf of the plaintiff, is properly signed within the meaning of the proviso in Act X. of 1877, s. 51 (as amended by Act XII. of 1879).—*Kastolino (H.) v. Rustomji Dadábhái, I. L. R., 4 Bom. 468. [Mar. 8, 1880.]*

In all cases, whether a plaint is verified by the plaintiff or by some other person, the party verifying should state shortly what paragraphs he verifies of his own knowledge, and what paragraphs he believes to be true from the information of others.—*In re Upendro Lall Bose, I. L. R., 6 Cal. 675. [Sep. 3, 1880.]*

52. The verification must be to the effect that the same is true to the knowledge of the person making it, except as to matters stated on information and belief, and that as to those matters he believes it to be true. Ditto.

Contents of verification.

Verification to be signed and attested.

The verification shall be signed by the person making it.

THE Court must be satisfied, under s. 52, that a person, other than a plaintiff verifying the plaint, is acquainted with the facts of the case; but in the case of a person holding a general power-of-attorney, or of any other recognised agent, the Court will not insist on any extreme stringency of proof. S. 52 does not require the verification of a plaint to be made in the presence of an officer of the Court; but having regard to the necessity of satisfying the Court that the person, other than the plaintiff, who verifies the plaint, is acquainted with the facts of the case, it is desirable that a verification by such a person should be made in the presence of the Court, unless the Court be satisfied that there is sufficient ground for dispensing with his attendance.—*Kastolino (H.) v. Rustonji Dadabhái*, 1. L. R., 4 Bom. 468. [Mar. 8, 1880.]

IN all cases, whether a plaint is verified by the plaintiff or by some other person, the party verifying should state shortly what paragraphs he verifies of his own knowledge, and what paragraphs he believes to be true from the information of others.—*In re Upendro Lal Bose*, 1. L. R., 6 Cal. 675. [Sep. 3, 1880.]

It is not necessary to obtain the leave of the High Court under cl. 13 of the Letters Patent to sue to set aside a decree of that Court, made upon a compromise to which the plaintiff has been induced by the misrepresentation of the defendant to agree, even when it appears from the plaint that the defendants are outside the jurisdiction of the Court. To describe the plaintiff as residing in Chitpore Road in the town of Calcutta, is not a sufficient description, under s. 50 of the Civil Procedure Code, of his place of abode; nor is it sufficient under that section to describe the defendant as formerly of Calcutta, without alleging that the plaintiff has been unable to ascertain his place of residence more definitely. Where the plaint alleges matter which cannot be personally known to the person making the verification, and which is not stated to be on information and belief, a verification which does not distinguish how much is true to the knowledge of the person making it, and what is alleged to be true on information and belief, does not fulfil the requirements of s. 52.—*Bilce Solomon v. Abdool Azeez*, 1. L. R., 6 Cal. 687. [Feb. 7, 1881.]

Extending to
Provincial S.
Courts.

53. The plaint may,

When plaint may be rejected, returned for amendment, or amended.

at the discretion of the Court, and at or before the first hearing, be rejected, returned for amendment within a time to be fixed by the Court, or amended then and there, upon such terms as to the payment of costs occasioned by the amendment as the Court thinks fit,

(a) if it does not state correctly and without prolixity the several particulars hereinafore required to be specified therein; or

(b) if it contains any particulars other than those so required; or

(c) if it is not signed and verified as hereinbefore required; or

(d) if it does not disclose a cause of action; or

(e) if it is not framed in accordance with section 42; or

(f) if it is wrongly framed by reason of non-joinder or misjoinder of parties, or because the plaintiff has joined causes of action which ought not to be joined in the same suit:

Provided that a plaint cannot be altered so as to convert a suit of one character into a suit of another and inconsistent character.

Provido.

Attestation of amendment.

When a plaint is amended, the amendment shall be attested by the signature of the Judge.

A PLAINT alleged that the plaintiffs had the exclusive right to the Adhyapaka miras of reciting certain religious texts, hymns, or chants in a certain pagoda and its dependencies; that the defendants had no right to recite them; that the plaintiffs and the Brahmins of the plaintiffs' Tenkahai sect had for a long time discharged all the duties appertaining to the said right, and enjoyed the incomes of the Adhyapakam, except those mentioned in Schedules B and C; that the defendants, holding the office of dharmakarta of the said pagoda, in combination with other persons in rivalry with the plaintiffs, recited the Vadakahai invocations, chants, and other religious prayers, the exclusive right to recite which was incident to the plaintiffs' Adhyapaka miras, the exclusive right of the

plaintiffs being injured; that the defendants having withheld the payment of some of the incomes of the Adhyapaka miras in the said pagoda and in all the Sanwidhis attached to it, the plaintiffs instituted a suit against them in the District Munsif's Court, and in March 1878 a decision was passed in favour of the plaintiffs; and that the defendants had withheld from the plaintiffs and others of the Tenkalai sect the amount of income mentioned in Sch. C for six years from the date of the said suit as well as the honors mentioned in Sch. A from April 1873. The plaint concluded, with a prayer for a decree directing the defendants and others to abstain from reciting the said texts, hymns, or chants; for a declaration of the exclusive right of the plaintiffs; and for the recovery of the various items stated in the schedules. Sch. B referred to certain payments in kind. The High Court of Madras, under s. 32 of Act VIII. of 1859, rejected the plaint, on the ground that its subject-matter did not constitute a cause of action. *Held* that the plaint ought to have been admitted, since it disclosed a claim as of right to certain dues for services performed.—*Tiru Krishnama Chariar v. Krishna Swami Tala Chariar*, 3 Ind. Jur. 322.

S. 53 of the Civil Procedure Code, which provides that a plaint cannot be amended so as to convert a suit of one character into a suit of another and inconsistent character, does not prevent a plaintiff, who has been ousted after suit brought for declaration of title, from amending his plaint by adding a prayer for possession. If the congregation of a church as a body cease to follow the observances of a particular form of worship, and in preference for forty years follow those of a different form of worship, there would be no one left for whom and by whom the original form of worship can be continued, the objects of the original trust cease to exist, and the church-funds and property become impressed with a trust for the performance of the later form of worship. Where a defendant out of the jurisdiction of the Court was summoned to produce a letter, and did not comply with the summons, but appeared by pleader at the last moment at the hearing of the suit, and service of notice on the pleader to produce the letter would have been nugatory, secondary evidence of the letter was admitted under s. 66, proviso 6 of the Evidence Act.—*Bishop Mellus v. Vicar Apostolic of Malabar*, 1. L. R., 2 Mad. 295. [Mar. 26, 1879.]

WHERE, at the first hearing of a suit, the plaint is returned for amendment within a fixed time under the provisions of Act X. of 1877, s. 53, and it is amended accordingly, it cannot afterwards be again returned for amendment.—*Badr-un-nisa v. Muhammad Jan*, 1. L. R., 2 All. 671. Feb. 27, 1880.]

WHERE a plaintiff alleged that M, the deceased widow of S, a Hindu, while administering the estate of her deceased husband, borrowed money from plaintiff for purposes binding on the estate, and executed a promissory note to secure the payment of the same, and that the first and second defendants, as reversionary heirs of S, and the third defendant, were in possession of the estate of S, and refused to pay the debt incurred by M, *held* that the plaint was properly rejected as disclosing no cause of action against the defendants.—*Ramasami Mudaliar v. Sellattammal*, 1. L. R., 4 Mad. 375. [Jan. 23, 1881.]

IN a suit for confirmation of possession and declaration of title in respect of land, where the plaint did not disclose any facts from which it could be said that the defendants denied the plaintiff's title, but from the proceedings in the original cause it was established that, before the suit was brought, there was a dispute existing between the parties as regards the title, and that a decree in favour of the plaintiffs had been passed by the original Court on the merits of the case, *held* that though the plaint might have been rejected in the first instance under s. 53 of the Civil Procedure Code on the ground that it did not disclose any cause of action, it was too late for an Appellate Court to reverse the decree solely on that ground, without being satisfied that no such cause of action was established on the evidence.—*Shah Ahmed Sujad v. Targee Rai*, 1. L. R., 7 Cal. 343. [April 12, 1881.]

THE plaintiff in a suit applied for the amendment of the plaint. The defendant objected to the amendment, and a day was fixed by the Court for the "admission or rejection of the petition, and the determination of the defendant's objections thereto." The Court, after hearing the parties, made an order allowing the "petition of amendment," and rejecting the defendant's objections. The defendant appealed from such order to the High Court. *Held* that, inasmuch as orders amending plaints then and there are not made appealable by Act X. of 1877, and it was into this category, if into any at all, that such order must fall, such order was not appealable.—*Rajindra Kishore Singh v. Radha Prasad Singh*, 1. L. R., 3 All. 854. [June 15, 1881.]

THE words in para. 1 of s. 53 of the Code of Civil Procedure (Act X. of 1877), "at or before the first hearing," are merely directory and not mandatory, and therefore a plaintiff may, subsequently to the "first hearing," amend his plaint, provided such amendment does not alter the original character of his suit. The plaintiffs (mortgagors) in a

suit against their mortgagees sought only for production of the mortgage-deed or for an account, although the averments in the plaint warranted a prayer for redemption. Subsequently to the first hearing of the suit they applied to be allowed to amend the plaint by adding a prayer for redemption. *Held* that the provisions of s. 53 of the Civil Procedure Code (Act X. of 1877) did not preclude the Court from permitting the amendment to be made. It is competent to a Court, at any time before passing a decree, to frame an additional issue embracing a matter not included in the plaint (provided it be not inconsistent with it) or in the written statement, but which may appear upon the allegations made on oath by the parties or by any person present on their behalf, or made by the pleaders of such parties or persons. S. 34 of the Civil Procedure Code (Act X. of 1877) limits the time within which a defendant may object for wants of parties, but it does not so limit the right of the plaintiff to add parties. In some cases s. 34 would not prevent even a defendant from objecting to the want of a party after the first hearing, *e. g.*, where after the first hearing and before decree a co-parcener or remainderman or reversioner is born, or where a woman (who is a party) is married to a man who is not a party to the suit. The objection did not exist at or before the first hearing, and therefore could not have been made or waived by the defendant; and if he made it at the earliest opportunity after it came into existence, he would have satisfied the spirit of s. 34.—*Modhe (R. and N.) v. Dongre (S.)*, I. L. R., 5 Bom. 609. [Aug. 2, 1881.] Dissented from in *Damodar Das v. Gokal Chand*, I. L. R., 7 All. 79, *infra*.

S. 26 of the Code of Civil Procedure does not authorize the joinder of plaintiffs with antagonistic claims arising out of distinct causes of action. Where one of two widows of a deceased Hindu and her adopted son sued as co-plaintiffs, claiming in the alternative either to transfer the whole family-estate for the latter, if the adoption was valid, or, if the adoption was invalid, one-half of the estate for the former, *held* that the suit was bad for misjoinder. *Held* also that when such misjoinder had been allowed, and the suit decided, and an appeal brought, the Court of Appeal should dispose of the suit in the mode in which the lower Court ought to have disposed of it, by returning the plaint for amendment. *Farzand Ali v. Yusuf Ali* (I. L. R., 2 All. 669) dissented from.—*Lingammál v. Venkatammál*, I. L. R., 6 Mad. 239. [Dec. 22, 1882.]

WHERE a plaintiff's claim as originally stated in his plaint was based on the allegation of the invalidity of a will, an application at the hearing of the case to amend the plaint by inserting a clause submitting that, even if the will were valid, it did not dispose of the whole of the testator's property, was refused—the Court holding, under s. 53 of the Civil Procedure Code (Act XIV. of 1882), that the case made by the proposed amendment would be inconsistent with the case made in the plaint as originally framed.—*Dámodar Mádhawji v. Purmanandás Jeewandás*, I. L. R., 7 Bom. 155. [Jan. 29, 1883.]

WHERE, after a trial has begun, or even after it has concluded, it appears that the Court has not jurisdiction to hear the case, the plaint should be returned in order that it may be presented to the proper Court, and no additional court-fees are payable. The pre-existing state of the law as recognized by the tribunals is one of the chief means of interpreting laws of procedure.—*Jagjivandás Javherdás Seth v. Magdum Ali* (I. L. R., 7 Bom. 487) overruled.—*Prabhákárbbhat v. Vishwambhar Pandit*, I. L. R., 8 Bom. 313. [Mar. 6, 1884.]

HELD (Oldfield, J., dissenting) that, under s. 53 of the Civil Procedure Code, a plaint can be rejected, returned for amendment, or amended by the Court of first instance only at or before the first hearing of the suit, and not after the first hearing thereof. *Modhe v. Dongre* (I. L. R., 5 Bom. 609) dissented from. *Soorj mukhi Koer's Case* (I. L. R., 2 Cal. 272), *Burjore v. Bhagana* (I. L. R., 10 Cal. 557; I. L. R., 11 Ind. Ap. 7), and *Fazul-un-nissa Begam v. Mulo* (I. L. R., 6 All. 250), distinguished by *Mahmood, J.* *Per Mahmood, J.*—The plaint may, for causes other than those mentioned in s. 53, be amended by the Court after the first hearing.—*Damodar Das v. Gokal Chand*, I. L. R., 7 All. 79. [July 14, 1884.]

WHERE it is open to the plaintiff to ask for an account, against the defendant, of moneys received by him under a certificate of heirship, and for payment of moneys, not properly accounted for, he is precluded by s. 2 of the Specific Relief Act (I. of 1877) from asking for a mere declaratory decree. Plaint allowed by the High Court to be amended by insertion of a prayer for account.—*Bai Anops v. Mulchand Girdhar*, I. L. R., 9 Bom. 355. [Feb. 17, 1885.]

S. 442 of the Civil Procedure Code refers to a case where the plaint on the face of it appears to have been filed by a person who was a minor. Where, in a suit, the plaintiffs described themselves as adults, and, on the objection of the defendants, an issue was raised, and inquired into, on the question of age, *held* that the order passed under the circumstances, although it professed to have been made under s. 442 of the Procedure Code, must be treated as one rejecting the plaint or dismissing the suit on the ground that the suit was

instituted by persons who were established on the evidence to be minors, and was appealable as a decree within the meaning of s. 2 of the Code. The words, "rejecting the plaint," in s. 2, are not limited to the cases provided for in ss. 53, 54. *Held* also that the defendant, not having taken an objection to the suit on the ground of the minority of the plaintiffs whilst it was pending in appeal to the High Court, were precluded from raising it on remand.—*Beni Ram Bhutt v. Ram Lal Dhukri*, I. L. R., 13 Cal. 189. [Mar. 30, 1886.]

A SUIT was brought by the manager of the M Bank against the executrix of B to recover a sum of money as due upon a bond executed by B in favour of the Bank. The plaint described the defendant as "Mrs. Sarah G. Barlow of Mussoorie," and stated that she was executrix of the deceased B. It began thus: "George Henry Webb, manager of the above-named plaintiff's business, states as follows," and proceeded to state that the deceased was, at the time of his death, "indebted to the plaintiff," and to set forth the cause of action in detail. It was signed and verified thus: "For the M Bank, Limited, G. H. Webb, Manager." The Court of first instance returned the plaint for amendment under s. 53 of the Civil Procedure Code: (1) because the defendant was not properly described; (2) because the plaint was set out as made by George Henry Webb as manager, and not as on the part of the Bank; and (3) because the suit should not have been brought in the form in which it was brought, but in the form referred to in s. 213 and No. 106 of sch. 4 of the Code. *Held* that the first of these grounds failed, because it was clear that the defendant was stated to be the executrix of the deceased, and the suit was brought against her in that capacity. *Held* that the second ground did not come within s. 53 of the Code, as it was clear that the circumstances set out in the plaint applied to the case of the plaintiff Bank, and the plaint sufficiently fulfilled the requirements of the Code that the facts which the plaintiff considers essential should be concisely and clearly set out, and that the verification should be made by some one acquainted with these facts. *Held*, with reference to the third ground, that the plaintiff was at liberty to bring a suit for money against any person administering to or representing an estate; and if such suit should be found, with reference to the facts in evidence, not maintainable, it should be dismissed; but there was no authority for returning a plaint for amendment, when it was found that the suit was not maintainable in the form in which it was brought, in order to amend it so as to convert the suit into one of a different character.—*Mussoorie Bank, Ltd., v. Barlow*, I. L. R., 9 All. 188. [Dec. 23, 1886.]

When plaint shall be rejected.

54. The plaint shall be rejected in the following cases:—

Extending to Provincial S. C. Courts.

(a) if the relief sought is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so:

(b) if the relief sought is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so.

(c) if the suit appears from the statement in the plaint to be barred by any positive rule of law:

(d) if the plaint, having been returned for amendment within a time fixed by the Court, is not amended within such time.

THE law may lay down, for purposes of revenue, certain rules for the valuation of suits; but such valuation cannot be accepted as a criterion of the actual amount or value of the claim upon which the jurisdiction of a Court depends. The actual value of the estate to which the plaintiff claims to be entitled, and not the value which it may eventually represent to the plaintiff, is the value of the subject-matter.—*Bai Mahkor v. Bulakhi Chaku*, I. L. R., 1 Bom. 538. [Dec. 10, 1874.]

WHERE, under Act VIII. of 1859, s. 336, a memorandum of appeal is returned for the purpose of being corrected, the Appellate Court should specify a time for such correction. Where an appellant presented an appeal within the period of limitation prescribed therefor, and the Appellate Court returned the memorandum of appeal for correction, the appeal, again presented some days after the period of limitation, was held presented within time, the date of its presentation being the date it was presented.—*Jagan Nath v. Lal*, I. L. R., 1 All. 260. [June 29, 1876.]

WHERE the Court of first instance, proceeding under s. 10 of the Court-fees Act, dismissed a suit after the first hearing, on non-payment of an additional fee required to be paid under that section, *held* that the Court had rightly dismissed the suit, under s. 10 of the Court Fees Act. S. 54, Act X. of 1877, though a later enactment, was inapplicable, that section applying only to the initial stages of a suit before a plaint had been registered; whereas s. 10 of the Court Fees Act was not susceptible of restriction to any particular stage of a suit.—*Valiya Kāsava Vādiyar v. Suppannair*, 4 Ind. Jur. 286; 1 L. R., 2 Mad. 308. [Feb. 9, 1880.]

AN appeal lies against an order rejecting a plaint on the ground of its being insufficiently stamped.—*Ajoodhya Pershad v. Gunga Pershad*, 1 L. R., 6 Cal. 249. [June 10, 1880.]

THE assessment of the court-fee in a suit by a subordinate tenure-holder to recover possession of a definite portion of an entire estate paying a permanently settled annual revenue to Government should be made under the first part of sub-division a, cl. 5 of s. 7 of the Court-fees Act. A plaint can only be rejected under s. 54 of Act X. of 1877 before it is registered.—*Huhibul Hossein v. Mithomed Reza*, 1 L. R., 8 Cal. 192. [Sep. 8, 1881.]

AN order rejecting a memorandum of appeal as barred by limitation is a “decree” within the meaning of s. 2 of the Civil Procedure Code; it is therefore appealable, and not open to revision by the High Court under s. 622 of the Code. *Gajraj Singh v. Bhagwant Singh and Dianatullah* (Weekly Notes, 1883, p. 255) and *Reg. v. Wajid Ali Shah* (1 L. R., 6 All. 478) distinguished.—*Gulab Rai v. Mangli Lal*, 1 L. R., 7 All. 42. [June 29, 1884.]

A JUDGE, after disposing of an appeal on the 1st March 1883, again took it up, and on the 21st March 1883 directed the appellant to pay additional court-fees on her memorandum of appeal. On the 2nd May 1883, the appellant paid the additional court-fees under protest, and a decree was then prepared, bearing date the 1st March 1883, but it referred to, and carried into effect, the subsequent order of the 21st March and the 2nd May. *Per Mahmood, J.*, that as soon as the Judge had passed the decree of the 1st March 1883, he ceased to have any power over it, and was not competent to introduce new matters not dealt with by the judgment; that the order of the 21st March and the deposit of the 2nd May, whether right or wrong, were not proceedings to which effect could be given in the antecedent decree of the 1st March 1883; and that the decree was *ultra vires* to that extent, and was, therefore, liable to correction in second appeal under s. 584 of the Civil Procedure Code. The powers conferred by ss. 54 (a) and (c) and 55, read with s. 582 of the Civil Procedure Code, or by s. 12 of the Court-fees Act (VII. of 1870) read with cl. 2 of s. 10, are intended to be exercised before the disposal of the case, and not after it has been decided finally so far as the Court is concerned. The powers conferred by s. 28 of the Court-fees Act cannot be exercised by an order passed after the decision of the case to which the question of the payment of court-fees relates, and, even assuming that they can be so exercised, such an order, though it may be subject to such rules as to appeal or revision as the law may provide, cannot be given effect to by making insertions in an antecedent decree. *Per Oldfield, J.*—That the Court had power to make the order it did, inasmuch as the collection of court-fees was no part of a Judge’s functions in the trial of a suit which could be said to have ceased with its determination; and the provisions of the Court-fees Act fixed no time within which the presiding Judge could exercise his power of ordering documents to be stamped, and sealed, on the other hand, to contemplate the exercise of that power at any time subsequent to the receipt, filing, or use of a document, and to make the validity of the document and the proceedings relative thereto dependent on the document being properly stamped.—*Mahadei v. Ram Kishen Das*, 1 L. R., 7 All. 528. [Jan. 15, 1885.]

THE decision of the Court of first instance, that a plaint is undervalued, is binding upon the Court of appeal, reference, or revision; but the Court of first instance is not justified in rejecting the plaint without giving to the plaintiff an opportunity of affixing the proper stamp. Where it is open to the plaintiff to ask for an account, against the defendant, of moneys received by him under a certificate of heirship, and for payment of moneys not properly accounted for, he is precluded by s. 2 of the Specific Relief Act (I. of 1877) from asking for a mere declaratory decree. Plaint allowed by the High Court to be amended by insertion of a prayer for account.—*Bái Anope v. Mulchand Girdhar*, 1 L. R., 9 Bom. 355. [Feb. 17, 1885.]

S. 442 of the Civil Procedure Code refers to a case where the plaint on the face of it appears to have been filed by a person who was a minor. Where, in a suit, the plaintiffs described themselves as adults, and on the objection of the defendants an issue was raised and inquired into on the question of age, *held* that the order passed under the circumstances,

although it professed to have been made under s. 442 of the Civil Procedure Code, must be treated as one rejecting the plaint or dismissing the suit on the ground that the suit was instituted by persons who were established on the evidence to be minors, and was appealable as a decree within the meaning of s. 2 of the Code. The words, "rejecting the plaint," in s. 2, are not limited to the cases provided for in ss. 53, 54. *Held* also that the defendant, not having taken an objection to the suit on the ground of the minority of the plaintiffs whilst it was pending in appeal to the High Court, were precluded from raising it on remand.—*Beni Ram Bhutt v. Ram Lal Dhukri*, I. L. R., 13 Cal. 189. [Mar. 30, 1886.]

55. When a plaint is rejected, the Judge shall record with his own hand an order to that effect with the reason for such order. Extending to Provincial S. C. Courts.

56. The rejection of the plaint on any of the grounds hereinafore mentioned shall not, of its own force, preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Ditto.

When rejection of plaint does not preclude presentation of fresh plaint.

A JUDGE, after disposing of an appeal on the 1st March 1883, again took it up, and, on the 21st March 1883, directed the appellant to pay additional court-fees on her memorandum of appeal. On the 2nd May 1883, the appellant paid the additional court-fees under protest, and a decree was then prepared, bearing date the 1st March 1883, but it referred to, and carried into effect, the subsequent order of the 21st March and the 2nd May. *Per* Mahmood, J., that as soon as the Judge had passed the decree of the 1st March 1883, he ceased to have any power over it, and was not competent to introduce new matters not dealt with by the judgment; that the order of the 21st March and the deposit of the 2nd May, whether right or wrong, were not proceedings to which effect could be given in the antecedent decree of the 1st March 1883; and that the decree was *ultra vires* to that extent, and was, therefore, liable to correction in second appeal under s. 584 of the Civil Procedure Code. The powers conferred by ss. 54 (a) and (c) and 55, read with s. 582 of the Civil Procedure Code, or by s. 12 of the Court-fees Act (VII. of 1870) read with cl. 2 of s. 10, are intended to be exercised before the disposal of the case, and not after it has been decided finally so far as the Court is concerned. The powers conferred by s. 28 of the Court-fees Act cannot be exercised by an order passed after the decision of the case to which the question of the payment of court-fees relates, and, even assuming that they can be so exercised, such an order, though it may be subject to such rules as to appeal or revision as the law may provide, cannot be given effect to by making insertions in an antecedent decree. *Per* Oldfield, J.—That the Court had power to make the order it did, inasmuch as the collection of court-fees was no part of a Judge's functions in the trial of a suit which could be said to have ceased with its determination; and the provisions of the Court-fees Act fixed no time within which the presiding Judge could exercise his power of ordering documents to be stamped, and seemed, on the other hand, to contemplate the exercise of that power at any time subsequent to the receipt, filing, or use of a document, and to make the validity of the document and the proceedings relative thereto dependent on the document being properly stamped.—*Mahadei v. Ram Kishen Das*, I. L. R., 7 All. 523. [Jan. 15, 1885.]

57. The plaint shall be returned to be presented to the proper Court in the following cases:— Ditto.

When plaint shall be returned to be presented to proper Court.

(a) if a suit has been instituted in a Court whose grade is lower or higher than that of the Court competent to try it, where such Court exists, or where no option as to the selection of the Court is allowed by law:

(b) if, in a suit relating to immoveable property, but not coming under the proviso to section 16, it appears that no part of such property is situate within the local limits of the jurisdiction of the Court to which the plaint is presented:

(c) if, in any other case, it appears that the cause of action did not arise, and that none of the defendants are dwelling, or carrying on business, or personally working for gain, within such local limits.

On returning a plaint, the Judge shall, with his own hand, endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reason for returning it.

A SUIT to redeem a usufructuary mortgage of certain lands was instituted in the Munsif's Court. After the suit had been admitted, and the parties called on to produce evidence, the Munsif ordered the plaint in the suit to be returned to the plaintiff for presentation in the proper Court on the ground that the suit should have been instituted in the Court of the Subordinate Judge, the value of the property in suit being beyond the jurisdiction of a Munsif. *Held* that, under Act VIII. of 1850, the Munsif's order was appealable to the lower Appellate Court, and under Act X. of 1877 the lower Appellate Court's order to the High Court.—*Kalian Das v. Nawal Singh*, I. L. R., 1 All. 620. [Mar. 7, 1878.]

ALTHOUGH Act X. of 1877, s. 57, contemplates the return of the plaint should error be patent when it is first presented, yet there is nothing in the wording of that section which forbids the return of the plaint at a later stage in the suit. Where, therefore, after the issues in a suit were framed, the Court decided that it had no jurisdiction, and returned the plaint to be presented in the proper Courts, *held* that, in so doing, the Court acted under s. 57; and its decision, not coming within the definition of a "decree" in Act XII. of 1879, s. 2, was not appealable as such, but was appealable under Act X. of 1877, s. 588, as an order.—*Abdul Samad v. Rajindro Kishor Singh*, I. L. R., 2 All. 857. [Aug. 15, 1879.]

The plaintiff in this suit claimed in a Civil Court (1) a declaration of his right to certain land; (2) that certain leases of such land, so far as their terms exceeded the term of settlement, should be cancelled; and (3) arrears of rent for such land. The Court *held*, as regards claim (1), that the plaint did not disclose a cause of action, as it was not alleged that the defendant had disputed the plaintiff's right; as regards claim (2), that, with reference to the terms of s. 29 of Act XVIII. of 1873, the plaintiff's cause of action had not yet arisen; and as regards claim (3), that it was cognizable in a Court of Revenue; and it directed that under s. 57 of Act X. of 1877 the plaint should be returned to the plaintiff to be presented to the Revenue Court. *Held* that under the circumstances the plaint should have been rejected, and not returned.—*Nagar Mal v. Macpherson*, I. L. R., 3 All. 766. [May 2, 1881.]

THE Court of first instance made an order returning the plaint in a suit to be presented to the proper Court, on the ground that it was not competent to try such suit. On appeal from such order the Appellate Court, holding that the Court of first instance was competent to try such suit, made an order "decreeing the appeal." It subsequently made an additional order directing that the case "should be returned for re-trial." On appeal to the High Court from such additional order, *held* that the appeal would not lie, as it was in reality one from an order passed in appeal from an order returning a plaint, which, under the last clause of s. 588 of Act X. of 1877, was final, and not an appeal from an order remanding a case under s. 562, the character of the original order of the Appellate Court not being altered by the passing of the additional order.—*Kishna Ram v. Narsingh Sevek Singh*, I. L. R., 3 All. 855. [June 20, 1881.]

An allottee, under a private partition, sued to stay subsequent partition-proceedings brought under Reg. XIX. of 1814, and to have his possession confirmed. The defendants objected to the valuation of the suit, and to the suit being heard by the Civil Courts, no proceedings having first been instituted before the Revenue Authorities. *Held* that such a suit should be considered to be one for a declaratory decree, or for something in the nature of an injunction, and that, therefore, the plaint should not be stamped according to the value of the entire estate. That the question, whether the Collector would have brought the lands to partition, depended upon whether they were held "in common tenancy;" if they were not so held, the Collector would be only competent to make an assignment of the revenue in proportion to the several portions of the land held by the shareholders. That a private partition is no bar to proceedings in the Revenue Courts under s. 30 of Reg. XIX. of 1814. A Munsif dismissed a suit, on the ground that, if it had been properly valued, it would not have come within his jurisdiction. The District Judge affirmed the Munsif's judgment, and directed the plaint to be returned for presentation to the proper Court under s. 57 of the Civil Procedure Code. This was not done. *Held* that a second appeal would lie. *Ajoodhia Lall v. Gumanji Lall* (2 C. L. R. 134) approved. *Ajoodhya Pershad v. Kristo Dyal* (15 W. R. 165) dissented from.—*Joybat Roy v. Lall Bahadour Singh*, I. L. R., 8 Cal. 126. [Aug. 19, 1881.]

A MUNSIF, after hearing the evidence on both sides, found that the suit had been under-valued; but instead of returning the plaint under s. 57 of Act X. of 1877, he dismissed the suit. *Held* that the provisions of s. 57 were imperative, and might be put into force at any stage of the hearing; and that such dismissal of the suit was a matter which affected the merits of the case, and formed a proper subject for an appeal.—*Bhadeswar Chowdhry v. Gauri Kant Nath*, I. L. R., 8 Cal. 834. [April 12, 1882.]

A DISTRICT Court transferred for trial a suit instituted in a Court subordinate to it to another Court subordinate to it. The Court in which the suit was instituted was not the one in which the suit should have been instituted, and consequently the Court to which it was transferred made an order dismissing it, and directing the return of the plaint for presentation to the proper Court. *Held* that such order must be taken to have been passed under s. 57 of the Civil Procedure Code, and was therefore appealable under s. 588 (6); and that the defect of jurisdiction arising out of the institution of the suit in the wrong Court was not cured by the transfer of the suit.—*Pachioni Awasthi v. Ilahi Bakhsh*, I. L. R., 4 All. 478. [May 30, 1882.]

THE right to join in one suit two causes of action against a defendant cannot be exercised, unless the Court to which the plaint is presented has jurisdiction over both causes of action. The defendants, who resided and carried on business at Bombay, acted as the agents of the plaintiff for the sale, purchase, and despatch of goods to Tellicherry, where the plaintiff resided. The plaintiff sued the defendants for money due on account of the transactions in Tellicherry. *Held* that no cause of action arose in Tellicherry. To the claim arising out of the agency-transactions the plaintiff joined a claim on account of a partnership-transaction, which claim was triable by the Court of the District Munsif at Tellicherry. The Subordinate Judge held that he had no jurisdiction to try the claim arising out of the agency-transactions, found that nothing was due to the plaintiff on account of the partnership-transaction, and dismissed the suit. *Held* that the plaint ought to have been returned to the plaintiff with the proper endorsement as required by s. 57 of the Code of Civil Procedure, 1882.—*Jivaraju v. Purushotam*, I. L. R., 7 Mad. 171. [Sep. 17, 1883.]

In a suit filed in a District Munsif's Court to recover certain land, the defendants alleged that the value of the land was understated by the plaintiff, and exceeded by far the pecuniary limit of the Court's jurisdiction. Upon inquiry the Munsif found this allegation to be true, and directed the plaint to be returned to the plaintiff for presentation in a superior Court. The plaint having been presented in the Subordinate Court, the Subordinate Judge, on the authority of *Jagjivan Javerlhas Seth v. Magdum Ali* (I. L. R., 7 Bom 487), dismissed the suit. *Held* that the procedure adopted by the Munsif was correct.—*Kandu v. Kondu*, I. L. R., 8 Mad. 62. [Oct. 14, 1884.]

Per Petheram, C.J., and *Brodhurst, Mahmood*, and *Duthoit, JJ.*—The object of ss. 19 and 20 of the Bengal Civil Courts Act, 1871, was to create in the District Judge, Subordinate Judge, and Munsif concurrent jurisdiction up to Rs. 1,000. *Per Petheram, C.J.*—S. 15 of the Civil Procedure Code is a proviso to those sections. The word "shall" in that section is imperative on the suitor. The word is used for the purpose of protecting the Courts. The suitor shall be obliged to bring his suit in the Court of the lowest grade competent to try it. The object of the Legislature is that the Court of the higher grade shall not be overcrowded with suits. Whenever an Act confers a benefit, the donee may exercise the same or not at his pleasure. The proviso is for the benefit of the Court of the higher grade, and it is not bound to take advantage of it. If it does not wish to try the suit, it may refuse to entertain it. If it wishes to retain the suit in its Court, it may do so; it is not bound to refuse to entertain it. *Per Duthoit, J.*—The words in s. 57 of the Civil Procedure Code "shall be" are an instruction which the Court is bound to follow; and they are, therefore, a restraint upon jurisdiction. The effect, therefore, of the concurrent jurisdiction of Subordinate Judges and Munsifs is not to allow to a Subordinate Judge discretion as to accepting or not accepting for trial by himself suits cognizable by the inferior tribunal. *Brodhurst and Mahmood, JJ.*—S. 15 of the Civil Procedure Code is a rule of procedure, not of jurisdiction; and whilst it lays down that a suit shall be instituted in the Court of the lowest grade, it does not oust the jurisdiction of the Courts of higher grades. *Russick Chunder Mohunt v. Ram Lall Shaha* (22 W. R. 301), *Sircar v. Begum Bibi* (25 W. R. 219), followed. *Per Oldfield, J.*—S. 15 of the Civil Procedure Code is a provision entirely of procedure as distinct from jurisdiction, and its effect on s. 19 of the Bengal Civil Courts Act is that the jurisdiction of the District Judge and Subordinate Judge extends to all original suits cognizable by the Civil Court, subject in its exercise to a certain procedure, namely, that the suits be instituted in the Court of the lowest grade competent to try them. *Held*, therefore, by *Petheram, C.J.*, and *Oldfield, Brodhurst, and Mahmood, JJ.*, where a Subordinate Judge had tried a suit which a

Munsif, a Court of a lower grade, might have tried, that the Subordinate Judge had not acted without jurisdiction. The plaint in such suit had been in the first instance presented to the Munsif, who had returned it to be presented to the Subordinate Judge. *Per* Duthoit, J.—The decree of the Subordinate Judge would not be liable to be reversed in appeal for want of jurisdiction, for the jurisdiction was there, though it ought not to have been exercised. This view of the matter was consistent with the received canon of construction, that unless the Legislature uses negative words, or words showing an intention to treat the observance of a rule of procedure as essential, the rule will ordinarily be treated as a direction only. Under the circumstances, therefore, the District Judge had, in appeal, correctly refused to entertain the plea of defect in jurisdiction. *Per* Mahmood, J.—The institution of a suit in a Court of higher grade than the Court which is competent to try it is not a question either as to the jurisdiction or affecting the merits of the case. It is a question of the kind provided for by s. 578 of the Civil Procedure Code, and the irregularity is not one which affects “the merits of the case or the jurisdiction of the Court” within the meaning of the section. The plea of want of jurisdiction can be entertained for the first time at any stage of a suit, provided there is on the record sufficient material to substantiate it.—*Nidhi Lal v. Mazhar Husain*, 1. L. R., 7 All. 230. [Dec. 18, 1884.]

On the hearing of a suit in the Court of first instance, the Court came to the conclusion that the value of the property in dispute placed the claim beyond the jurisdiction of the Court; the suit was therefore dismissed with costs. On appeal this decision was reversed with costs, on the ground that the plaint ought to have been returned to the plaintiff for presentation in the proper Court. The defendant appealed to the High Court. *Held* that the defendant ought to have been allowed costs in both Courts, and that he was entitled to an appeal on that ground.—*Moshingan v. Mozari Sajad*, 1. L. R., 12 Cal. 271. [July 6, 1885.]

58. The plaintiff shall endorse on the plaint, or annex thereto, a memorandum of the documents (if any) which he has produced along with it; and, if the plaint be admitted, shall present as many copies on plain paper of the plaint as there are defendants, unless the Court, by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief or remedy required, in the suit, in which case he shall present such statements.

If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.

The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

The chief ministerial officer of the Court shall sign such memorandum and copies or statements if, on examination, he finds them to be correct.

The Court shall also cause the particulars mentioned in section 50 to be entered in a book to be kept for the purpose, and called the Register of Civil Suits. Such entries shall be numbered in every year according to the order in which the plaint is admitted.

59. If a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall, at the same time, deliver the document, or a copy thereof, to be filed with the plaint.

Production of document on which plaintiff sues. Delivery of document or copy.

If he rely on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

List of other documents.

IN compliance with an application for the sale of land to satisfy a decree the Civil Court put up certain land to auction in four lots. One lot was purchased by the plaintiff for Rs. 88, and each of the other three were bought by him for less than Rs. 100, the price for the whole amounting to Rs. 111-8-0, for which amount the Court granted a single certificate of sale, dated 10th February 1874. This certificate was never registered. The plaintiff applied to be put in possession; but the defendant resisting him, his application was rejected. On the 16th of November 1879, the plaintiff brought this suit to have his right declared to the piece bought for Rs. 88 and to recover its possession. Along with the plaint the plaintiff produced the unregistered certificate of sale of the 10th February 1874. On the application of the plaintiff, another certificate for the same property was issued by the Court to the plaintiff on the 31st of October 1877—that is, three years after the confirmation of sale. This was registered on the 20th of December 1877, and was produced, by the plaintiff in the proceedings which gave rise to the present suit. It was obtained, the plaintiff on the 23rd of February 1880, and tendered in evidence, but was rejected under s. 63 of the Code of Civil Procedure (Act XIV. of 1882). *Held* that although the four lots purchased by the plaintiff at the auction-sale were included in one certificate of sale, such certificate, although one instrument in form, should, for the purpose of registration, be regarded as four separate certificates of the four several lots. *Held* also that the registered certificate of sale, though issued three years after the confirmation of sale, was valid and admissible in evidence. *Vithal Janardan v. Vithojirav Putlajirav* (I. L. R., 6 Bom. 586) approved, and *In re Khajá Pathanji* (I. L. R., 5 Bom. 202) and *Tukaram v. Satvaji Khandoji* (I. L. R., 5 Bom. 206) dissented from. *Held* also that the refusal to admit in evidence the registered certificate of sale under s. 63 of the Code of Civil Procedure (Act XIV. of 1882) on the ground that it had not been produced with the plaint, as required by s. 59 of the Code, was improper, there having been no doubt of its existence at the date of suit.—*Devad Jaggivav v. Pirjada Begam*, I. L. R., 8 Bom. 377. [April 17, 1884.]

CERTAIN documents having been allowed by the District Munsif to be filed by the plaintiff during the trial of a suit, the District Judge, on appeal, held that he was bound to strike them off the file on the ground that they were not filed with the plaint nor entered in any list annexed to the plaint, and because the Munsif had not recorded any reason for admitting them. *Held* that, as the documents had been admitted in evidence by the Lower Court, the Appellate Court was bound to consider them.—*Minakshi v. Vellu*, I. L. R., 8 Mad. 373. [Mar. 9, 1885.]

Statement in case of documents not in his possession or power.

60. In the case of any such document not in his possession or power, he shall, if possible, state in whose possession or power it is. Extending to Provincial S. C. Courts.

61. In case of any suit founded upon a negotiable instrument, if it be proved that the instrument is lost, and if an indemnity be given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may make such decree as it would have made if the plaintiff had produced the instrument in Court when the plaint was presented, and had, at the same time, delivered a copy of the instrument to be filed with the plaint.

Ditto.

THE indorsees of a cheque sued the indorser, stating in their plaint that the cheque had been lost, and that the defendant refused to give them a duplicate of it, and claiming a duplicate of it or the refund of the money they had paid the defendant on the cheque. *Held* that the plaint disclosed a cause of action against the defendant. *Held* also that the plaint should be amended by joining the drawer of the cheque as a defendant in the suit.—*Baldeo Prasad v. Grish Chaudur Bose*, I. L. R., 2 All. 754. [Feb. 24, 1880.]

62. If the document on which the plaintiff sues be an entry in a shop-book or other book in his possession or power, the plaintiff shall produce the book at the time of filing the plaint, together with a copy of the entry on which he relies.

Ditto.

The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the Original entry to be marked and returned.

copy with the original, and attesting the copy if found correct, shall return the book to the plaintiff, and cause the copy to be filed.

SUIT by six plaintiffs praying for a declaration that certain proceedings of a District Temple Committee removing them from office as trustees of a temple were illegal. Defendants pleaded that the suit would not lie because of misjoinder, and also because further relief might have been sought. *Held* that, under s. 26 of the Code of Civil Procedure, the plaintiffs could not sue jointly, and that the plaint should be returned for amendment, one of the plaintiffs to be allowed to use it as his own. *Held* also that, unless there had been an actual ouster from office, a declaratory suit would lie.—*Rāmanuja v. Devanāyaka*, I. L. R., 8 Mad. 361. [Feb. 24, 1885.]

ending to
vincial S.
Courts.

63. A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

Nothing in this section applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant, or handed to a witness merely to refresh his memory.

~~CERTAIN~~ documents having been allowed by the District Munsif to be filed by the plaintiff during the trial of a suit, the District Judge, on appeal, held that he was bound to strike them off the file on the ground that they were not filed with the plaint nor entered in any list annexed to the plaint, and because the Munsif had not recorded any reason for admitting them. *Held* that, as the documents had been admitted in evidence by the Lower Court, the Appellate Court was bound to consider them.—*Minakshi v. Velu*, I. L. R., 8 Mad. 373. [Mar. 9, 1885.]

CHAPTER VI.

OF THE ISSUE AND SERVICE OF SUMMONS.

Issue of Summons.

64. When the plaint has been registered, and the copies of concise statements required by section 58 have been filed, a summons may be issued to each defendant to appear and answer the claim on a day to be therein specified,

- (a) in person, or
- (b) by a pleader duly instructed and able to answer all material questions relating to the suit, or
- (c) by a pleader accompanied by some other person able to answer all such questions.

Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court :

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint, and admitted the plaintiff's claim.

THE first hearing of a suit was fixed for the 12th December 1883, on which day the defendant did not appear, and the case was adjourned to the 18th December, and, as the defendant did not then appear, a decree was passed in favour of the plaintiff. A vakalat-nama had been previously filed on the defendant's part, and he had also objected to an application filed by the plaintiff for attachment of the defendant's property before judgment. *Held* that these acts on the defendant's part did not constitute an "appearance" by him within the meaning of s. 100 of the Civil Procedure Code, which referred to an appearance in answer to a summons to appear and answer the claim on a day specified, issued under s. 64; that the decree was therefore *ex parte* within the meaning of ss. 100 and 109, and an appeal consequently lay to the High Court under s. 583, cl. 9, from

an order rejecting an application to set the decree aside. *Zain-ul-abdin Khan v. Ahmad Raza Khan* (I. L. R., 2 All. 67; L. R., 5 Ind. Ap. 233) distinguished; *Administrator-General of Bengal v. Dyaram Das* (6 B. L. R. 688), *Bhimacharya v. Fakirappa* (4 Bom. H. C. R. 206), and *Bibee Haloo v. Atwaro* (7 W. R. 81), referred to. *Per Mahmood, J.*—That the Court on the 18th December seemed to have acted under s. 157 of the Civil Procedure Code, and, choosing the first of the alternative courses allowed by that section, acted under Chapter VII. of the Code, and passed an *ex-parte* decree under the provisions of s. 100 of that chapter.—*Hira Dai v. Hira Lal*, I. L. R., 7 All. 538. [Jan. 29, 1885.]

Copy or statement annexed to summons.

65. Every such summons shall be accompanied with one of the copies or concise statements mentioned in section 58. Extending to Provincial S. C. Courts.

Court may order defendant or plaintiff to appear in person.

66. If the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified. Ditto

If the Court sees reason to require the personal appearance of the plaintiff on the same day, it may make an order for such appearance.

A PLAINTIFF, who had been ordered, under s. 66 of the Civil Procedure Code, to appear in person in Court upon a day specified, failed to appear, and under s. 107, read with s. 102, his suit was dismissed. He then applied to the Court under s. 103 for an order to set the dismissal aside, but his application was rejected. He thereupon preferred an appeal from the decree dismissing the suit under the provisions of s. 540. *Held* that the plaintiff was not entitled to appeal from the decree dismissing the suit, and that his only remedy was by way of an appeal under s. 588 (8) of the Code from the order rejecting the application to set the dismissal aside. *Lal Singh v. Kunjan* (I. L. R., 4 All. 387) referred to.—*Krishna Ram v. Gobind Prasad*, I. L. R., 8 All. 20. [June 14, 1885.]

No party to be ordered to appear in person unless resident

67. No party shall be ordered to appear in person unless he resides. Ditto

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits and at a place less than fifty, or, where there is within 50 or, where there is railway, 200 miles. railway-communication for five-sixths of the distance between the place where he resides and the place where the Court is situate, two hundred miles from the Court-house.

68. The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly: Ditto

Provided that, in every suit heard by Courts of Small Causes, the summons shall be for the final disposal of the suit.

69. The day for the appearance of the defendant shall be fixed by the Court with reference to its current business, the place of residence of the defendant, and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day. Ditto

What shall be deemed 'sufficient time' must be determined with reference to the circumstances of the case.

70. The summons to appear and answer shall order the defendant to produce any document in his possession or power, containing evidence relating to the merits of the plaintiff's case, or upon which the defendant intends to rely in support of his case. Ditto

Summons to order defendant to produce documents required by plaintiff or relied on by defendant.

Extending to
Provincial S.
C. Courts.

On issue of summons for
final disposal defendant to be
directed to produce his wit-

71. When the summons is for the final disposal of the suit, it shall direct the defendant to produce, on the day fixed for his appearance, the witnesses upon whose evidence he intends to rely in support of his case.

Service of summons.

Ditto Delivery of summons for
service.

72. The summons shall be delivered to the proper officer of the Court, to be served by him or one of his subordinates.

Ditto 73. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

Ditto Service on several defend-
ants.

74. When there are more defendants than one, service of the summons shall be made on each defendant :

Provided that, if the defendants are partners, and the suit relates to a partnership-transaction, or to an actionable wrong in respect of which relief is claimable from the firm, the service may be made, unless the Court directs otherwise, either (a) on one defendant for himself and for the other defendants, or (b) on any person having the management of the business of the partnership at the principal place, within the local limits of the Court's ordinary original civil jurisdiction, of such business.

Ditto 75. Whenever it may be practicable, the service shall be made on the defendant in person, unless he have an agent empowered to accept the service, in which case service on such agent shall be sufficient.

Ditto 76. In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons issues, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

For the purpose of this section, the master of a ship is the agent of his owner or charterer.

SERVICE unduly made under s. 76 does not become effectual by reason of the fact of such service being subsequently notified to the parties really interested as defendants. *Seemle.*—Service duly effected under s. 76 is effectual without reference to the circumstance of its being or not being communicated to the real defendants.—*Gouldás Dwárkásas v. Ganeshlal Halasroy, I. L. R., 4 Bom. 416. [June 22, 1880.]*

Se. 76 AND 37, cl. c, are to be construed together, and are intended to carry out the same scheme of relief, which rests upon the idea that, where an agent has been put forward substantially to take the place of his principal within a particular jurisdiction, he should take the place of such principal (at the option of any person who has dealt with him) in any legal proceedings that may arise out of the business or work in which the agent has been virtually a local principal. The manager or agent contemplated by the Code is one who has an initiative and independent discretion, albeit subject possibly to principles and general orders prescribed for his guidance. A mere servant employed to carry out orders or to execute a particular commission, or a factor or common agent who is not identified with the firm for which he acts, is not such an agent.—*Gouldás Dwárkásas v. Ganeshlal Halasroy, I. L. R., 4 Bom. 416. [June 22, 1880.]*

THUS, a firm which carried on business at Agra, and had no place of business in Bombay, employed G as its agent in Bombay in certain dealings which it had with the plaintiff. The letters and telegrams of the firm to G were sent to the plaintiff's place of business, or addressed to G as an individual, and not in the name of the firm; nor did G himself initiate any business, or in any way stand between the firm and the plaintiff. *Held* that G was not the manager or agent of the firm, within the meaning of s. 76, upon whom summons could be served in an action against the firm.—*Goculdas Dwarkadas v. Ganeshlal Halasroy*, I. L. R., 4 Bom. 416. [June 22, 1880.]

TO SATISFY the conditions of Act X. of 1877, s. 76, as to service of summons on an agent, there must be a person residing without the local jurisdiction, but carrying on business or work within those limits by a manager or agent, and sued on account of such work, i. e., business either actually itself carried on by the agent or manager, or forming part of the business in the sense of a connected course of transactions to the management of which he has been duly appointed.—*Goculdas Dwarkadas v. Ganeshlal Halasroy*. L. R., 4 Bom. 416. [June 22, 1880.]

77. In a suit to obtain relief respecting, or compensation for wrong to, *Extending to Provincial S. Courts.*
 Service on agent in charge, immovable property, if the service cannot be made on the defendant in person, and the defendant have no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

78. If in any suit the defendant cannot be found, and if he have no *Ditto.*
 When service may be on male member of defendant's family. agent empowered to accept the service of the summons on his behalf, the service may be made on any adult male member of the family of the defendant who is residing with him.

Explanation.—A servant is not a member of the family within the meaning of this section.

79. When the serving-officer delivers or tenders a copy of the summons *Ditto.*
 Person served to sign acknowledgment. to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

80. If the defendant or other person refuses *Ditto.*
 Procedure when defendant refuses to accept service. to sign the acknowledgment,

or if the serving-officer cannot find the defendant, and there is no agent empowered to accept the service of the summons on his behalf, nor any other person on whom the service can be made,

the serving-officer shall affix a copy of the summons on the outer door of the house in which the defendant ordinarily resides, and then return the original to the Court from which it issued, with a return endorsed thereon or annexed thereto stating that he has so affixed the copy and the circumstances under which he did so.

WHERE the service of summons has been effected on a defendant by affixing a copy of the summons on the door of his dwelling-house, the Court must decide whether the summons has been duly served by such affixing or not, and if it decides in the negative a new summons must be issued, or substituted service directed. Before the Court can decide in favour of the sufficiency of this mode of service, it must be satisfied that the defendant is keeping out of the way for the purpose of avoiding service. Where a summons has been transmitted by one Court to another for service by the latter, the transmitting Court is not bound, in every case, to satisfy itself that the law as to service has been strictly followed. The presumption in favour of the proceedings of a Court of Justice is, that everything has been duly performed, and if the return made by the Court serving the summons states that the summons has been duly effected, that presumption must prevail, unless the return discloses some patent irregularity or clear divergence from

the law. As a rule, on a return from a competent Court, that *summons has been duly effected*, it may be presumed that either personal service has been effected, or substituted service under s. 82, or under ss. 80 and 82 combined, of the Civil Procedure Code (Act XIV. of 1882). As proof of due service of summons, a return from the Court of Small Causes at K was relied upon in the High Court. The return was in the following words: "Read bailiff's endorsement on the back of the process, stating that the summons has been affixed to the defendant's house on the 22nd December 1884 at 9 A.M.; and proof of the same having been duly taken by me, it is ordered that the summons be returned." *Held* that there was no sufficient service. The return itself proved the insufficiency. There was no statement, under the hand of the Judge, that the summons had been *duly effected*, and it did not appear that anything had been done beyond fixing the summons on the defendant's door. That affixing was not sanctioned after inquiry by the local Court, as required by s. 82. All that appeared to have been done was the affixing prescribed by s. 80, which was insufficient until confirmed under s. 82.—*Nusur Mahomed v. Kázbái*, I. L. R., 10 Bom. 202. [Feb. 8, 1886.]

Extending to
Provincial S.
C. Courts.

81. The serving-officer shall, in all cases in which the summons has been served under section 79, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when, and the manner in which, the summons was served.

Ditto.

82. When a summons is returned under section 80, the Court shall examine the serving-officer on oath touching his proceedings, and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served, or order such service as it thinks fit.

Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding the service, or that, for any other reason, the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided, or in such other manner as the Court thinks fit.

IN cases of substituted service, it is not sufficient to show that the notice has been attached to the door, unless the condition which renders such a mode of service good, *viz.*, that the person who ought to be served is keeping out of the way, has been first established to the satisfaction of the Court.—*Ram Chunder Dutt v. Jughesh Chunder Dutt*, (P. C.) 2 P. C. R. 836; 19 W. R. 363; 12 B. L. R. 229. [Mar. 25, 1873.] See also 22 W. R. 482; 24 W. R. 381.

WHERE substituted service of summons is ordered under Act X. of 1877, s. 82, a sufficient time ought, under s. 84, to be given for notice of the fact to reach the defendant, wherever he may be; and if an *ex-parte* decree be obtained by the plaintiff, the Court, on being satisfied that the time fixed was insufficient, will set aside the decree.—*Mirza Ally Bebanee v. Syed Hyder Hoosein*, I. L. R., 2 Bom. 449. [Feb. 19, 1878.]

WHERE the service of summons has been effected on a defendant by affixing a copy of the summons on the door of his dwelling-house, the Court must decide whether the summons has been duly served by such affixing or not, and if it decides in the negative, a new summons must be issued, or substituted service-directed. Before the Court can decide in favour of the sufficiency of this mode of service, it must be satisfied that the defendant is keeping out of the way for the purpose of avoiding service. Where a summons has been transmitted by one Court to another for service by the latter, the transmitting Court is not bound, in every case, to satisfy itself that the law as to service has been strictly followed. The presumption in favour of the proceedings of a Court of Justice is that everything has been duly performed, and if the return made by the Court serving the summons states that the summons has been duly effected, that presumption must prevail, unless the return discloses some patent irregularity or clear divergence from the law. As a rule, on a return from a competent Court, that *summons has been duly effected*, it may be presumed that either personal service has been effected, or substituted

service under s. 82, or under ss. 80 and 82 combined, of the Civil Procedure Code (Act XIV. of 1882). As proof of due service of summons, a return from the Court of Small Causes at K was relied upon in the High Court. The return was in the following words: "Read bailiff's endorsement on the back of the process, stating that the summons has been affixed to the defendant's house on the 22nd December 1884 at 9 A.M.; and proof of the same having been duly taken by me, it is ordered that the summons be returned." Held that there was no sufficient service. The return itself proved the insufficiency. There was no statement, under the hand of the Judge, that the summons had been *duly effected*, and it did not appear that anything had been done beyond fixing the summons on the defendant's door. That affixing was not sanctioned after inquiry by the local Court, as required by s. 82. All that appeared to have been done was the affixing prescribed by s. 80, which was insufficient until confirmed under s. 82.—*Nusur Mahomed v. Kázbai*, I. L. R., 10 Bom. 202. [Feb. 8, 1886.]

83. The service substituted by order of the Court shall be as effect- Extending to
Effect of substituted ser- tual as if it had been made on the defendant Provincial S.
vice. personally. C. Courts.

When service substituted,
time for appearance to be
fixed.

84. Whenever service is substituted by order
of the Court, the Court shall fix such time for the
appearance of the defendant as the case may
require.

Ditto.

WHERE substituted service of summons is ordered under Act X. of 1877, s. 82, a sufficient time ought, under s. 84, to be given for notice of the fact to reach the defendant wherever he may be; and if an *ex-parte* decree be obtained by the plaintiff, the Court, on being satisfied that the time fixed was insufficient, will set aside the decree.—*Mirza Ally Bebanee v. Syed Hyder Hoosein*, I. L. R., 2 Bom. 449. [Feb. 19, 1878.]

85. If the defendant resides within the jurisdiction of any Court other
than the Court in which the suit is instituted, and
has no agent resident within the local limits of
the jurisdiction of the latter Court empowered to
accept the service of the summons, such Court
shall send the summons, either by one of its
officers or by post, to any Court, not being a High Court, having jurisdiction
at the place where the defendant resides, by which it can be conveniently
served, and shall fix such time for the appearance of the defendant as the
case may require.

Ditto.

The Court to which the summons is sent shall, upon receipt thereof, pro-
ceed as if it had been issued by such Court, and shall then return the sum-
mons to the Court from which it originally issued, together with the record (if
any) made under this paragraph.

86. Whenever any process, issued by any Court established beyond the
limits of the towns of Calcutta, Madras, Bombay,
and Rangoon, is to be served within any such
town, it shall be sent to the Court of Small Cau-
ses within whose jurisdiction the process is to be
served;

Ditto.

and such Court of Small Causes shall deal with such process in the same
manner as if the process had been issued by itself,
and shall then return the process to the Court from which it issued.

87. If the defendant be in jail, the summons shall be delivered to the
officer in charge of the jail in which the defendant
is confined, and such officer shall cause the sum-
mons to be served upon the defendant.

Ditto

The summons shall be returned to the Court from which it issued, with
a statement of the service endorsed thereon, and signed by the officer in
charge of the jail, and by the defendant.

Extending to
Provincial S.
C. Courts.

88. If the jail in which the defendant is confined is not in the district in which the suit is instituted, the summons may be sent by post or otherwise to the officer in charge of such jail, and such officer shall cause the summons to be served upon the defendant, and shall return the summons to the Court from which it issued, with a statement of the service endorsed thereon, and signed as provided in section 87.

Ditto.

89. If the defendant resides out of British India, and has no agent in British India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post if there be postal communication between such place and the place where the Court is situate.

Ditto.

90. If there be a British Resident or Agent of Government in or for the territory in which the defendant resides, the summons may be sent to such Resident or Agent, by post or otherwise, for the purpose of being served upon the defendant; and if the Resident or Agent returns the summons with an endorsement under his hand that the summons has been served upon the defendant in manner hereinbefore directed, such endorsement shall be conclusive evidence of the service.

Ditto.

91. The Court may, notwithstanding anything hereinbefore contained, substitute for the summons a letter signed by the Judge or such officer as he appoints in this behalf, when the defendant is, in the opinion of the Court, of a rank which entitles him to such mark of consideration.

The letter shall contain all the particulars required to be stated in the summons, and, subject to the provisions contained in section 92, shall be treated in all respects as a summons.

Ditto.

92. When a letter is so substituted for a summons, it may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; unless the defendant has an agent empowered to accept service of summons, in which case the letter may be delivered or sent to such agent.

Service of Process.

Ditto.

93. Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

Costs of service.

The court-fee leviable for such service shall be levied within a time to be fixed by the Court before the process is issued.

Ditto.

94. All notices and orders required by this Code to be given to or served on any person shall be in writing, and shall be served in the manner hereinbefore provided for the service of summons.

Postage.

Ditto.

95. Postage, where chargeable on any notice, summons, or letter issued under this Code, and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed by the Court before the communication is forwarded;

Provided that the Local Government, with the previous sanction of the Governor-General in Council, may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

CHAPTER VII.

OF THE APPEARANCE OF THE PARTIES, AND CONSEQUENCE OF NON-APPEARANCE.

96. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard, unless the hearing be adjourned to a future day fixed by the Court.

Parties to appear on day fixed in summons for defendant to appear and answer. *Extending to Provincial S. C. Courts.*

97. If, on the day so fixed for the defendant to appear and answer, it be found that the summons has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee leviable for such service, the Court may order that the suit be dismissed :

Dismissal of suit where summons not served in consequence of plaintiff's failure to pay fee for issuing. *Ditto.*

Provided that no such order shall be passed, although the summons has not been served upon the defendant, if, on the day fixed for him to appear and answer, he attends in person or by agent, when he is allowed to appear by agent.

Proviso.

AN order under s. 97 of the Civil Procedure Code, dismissing a suit, on its being found that the summons has not been served on the defendant, in consequence of the failure of the plaintiff to pay the court-fee leviable for such service, is not appealable.—*Lucky Churn Chowdhry v. Budurrunnissa*, I. L. R., 9 Cal. 627. [Aug. 15, 1882.]

98. If, on the day fixed for the defendant to appear and answer, or on any other subsequent day to which the hearing of the suit is adjourned, neither party appears, the suit shall be dismissed, unless the Judge, for reasons to be recorded under his hand, otherwise directs.

Ditto.

A PETITION was made under s. 549 of the Civil Procedure Code, praying that an appellant might be required to give security for the costs of the appeal. The ground upon which the petition was based was that the appellant was not pecuniarily in a position to pay the costs of the appeal if it should be dismissed. An order was passed directing the appellant to show cause why the prayer of the petitioner should not be granted. When the petition came on for hearing, no one appeared to support it or to show cause against it, and it was accordingly rejected. An application was subsequently made on behalf of the petitioner, praying that the case might be restored to the register, on the ground that counsel for the petitioner was absent on the occasion of the hearing for fifteen minutes only, and that, as no one on behalf of the appellant had appeared to show cause, the petition should have been granted, and the absence of petitioner's counsel was immaterial. *Held* that the matter was dealt with by s. 98 of the Civil Procedure Code, and that s. 647 of the Code, prescribing that the procedure laid down for suits should be followed as far as it could be made applicable in proceedings other than suits, made s. 99 the rule by which the Court was to be guided. *Held* also that although no general rule could be laid down that the absence of counsel, when a case has been called on, should be treated as by itself a sufficient reason for restoring to the register either a regular suit, or an appeal, or a miscellaneous application, but each case of the kind must be dealt with according to its own particular circumstances, in the present case, taking the circumstances into consideration, an absence of counsel for fifteen minutes was not enough to preclude the Court from restoring the petition to the register.—*Lakhni Chand v. Gatto Bai*, I. L. R., 7 All. 542. [Feb. 19, 1885.]

Extending to
Provincial S.
C. Courts.

99. Whenever a suit is dismissed under section 97 or section 98, the plaintiff may (subject to the law of limitation) bring a fresh suit; or if, within the period of thirty days from the date of the order dismissing the suit, he satisfies the Court that there was a sufficient excuse for his not paying the court-fee required within the time allowed for the service of the summons, or the Court may restore suit to its file. for his non-appearance, as the case may be, the Court shall pass an order to set aside the dismissal, and appoint a day for proceeding with the suit.

WHERE the plaintiff in a suit failed to deposit the *talabana* required for the purpose of issuing summonses to certain persons whom it was proposed to make defendants in addition to the original defendants in such suit, and the Court on that ground irregularly dismissed such suit as against such original defendants by an order purporting to be made under s. 110 of Act VIII. of 1859 on a day previous to that fixed for the hearing of such suit, *held* that such order of dismissal did not preclude the plaintiff from instituting a fresh suit.—*Gulab Dai v. Jiwan Ram*, I. L. R., 2 All. 318. [May 26, 1879.]

A PETITION was made under s. 549 of the Civil Procedure Code, praying that an appellant might be required to give security for the costs of the appeal. The ground upon which the petition was based was that the appellant was not peculiarly in a position to pay the costs of the appeal if it should be dismissed. An order was passed directing the appellant to show cause why the prayer of the petitioner should not be granted. When the petition came on for hearing, no one appeared to support it, or to show cause against it, and it was accordingly rejected. An application was subsequently made on behalf of the petitioner, praying that the case might be restored to the register, on the ground that counsel for the petitioner was absent on the occasion of the hearing for fifteen minutes only, and that, as no one on behalf of the appellant had appeared to show cause, the petition should have been granted, and the absence of petitioner's counsel was immaterial. *Held* that the matter was dealt with by s. 98 of the Civil Procedure Code, and that s. 647 of the Code, prescribing that the procedure laid down for suits should be followed as far as it could be made applicable in proceedings other than suits, made s. 99 the rule by which the Court was to be guided. *Held* also that although no general rule could be laid down that the absence of counsel, when a case has been called on, should be treated as by itself a sufficient reason for restoring to the register either a regular suit, or an appeal, or a miscellaneous application, but each case of the kind must be dealt with according to its own particular circumstances, in the present case, taking the circumstances into consideration, an absence of counsel for fifteen minutes was not enough to preclude the Court from restoring the petition to the register.—*Lakhmi Chand v. Gatto Bai*, I. L. R., 7 All. 542 [Feb. 19, 1885.]

Ditto.

99A. If, after a summons has, whether before or after the first day of

Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.

June 1882, been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails for a period of one year from such return to apply for the issue of a fresh summons, and to satisfy the Court that he has used

his best endeavours to discover the residence of the defendant who has not been served, or that such defendant is avoiding service of process, the Court may dismiss the suit as against such defendant.

In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

Ditto.

Procedure if only plaintiff appears,

100. If the plaintiff appears, and the defendant does not appear, the procedure shall be as follows :

when summons duly served, (a) if it is proved that the summons was duly served, the Court may proceed *ex parte* :

(b) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant :

(c) if it is proved that the summons was served on the defendant, but when summons served, but not in sufficient time to enable him to appear and not in due time. answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

If it is owing to the plaintiff's default that the summons was not served in sufficient time, the Court shall order him to pay the costs occasioned by such postponement.

WHEN the plaintiff in a suit appears at the hearing, and the defendant does not appear, the proper procedure to follow is that prescribed by s. 100 of Act X. of 1874, whether the defendant has been summoned only to appear and answer the claim, or has in addition been summoned to attend and give evidence. It is not necessary, before proceeding to hear and determine a suit *ex parte* under s. 100, that all the process prescribed by law for compelling the attendance of the defendant as a witness should be exhausted. It is sufficient that due service of the summons upon the defendant is proved. If such proof is not given, the courses to be adopted are one or other of those mentioned in clauses b and c of s. 100 according to the circumstances of the case. The plaints and records in a number of suits upon bonds instituted by the same plaintiff against different persons were destroyed by fire. The suits were re-instituted, and duplicate copies of the plaints were filed. The only evidence of the contents of the bonds, from which the plaints were prepared, consisted of a register kept by the plaintiff's *gumastahs* of the names of the executants of the bonds, the matter in respect of which the bonds had been given, the amounts due thereunder, and the names of the attesting witnesses. From this register the duplicate plaints had been prepared. *Held* that though the register was not secondary evidence of the contents of the bonds, yet it was a document which might be referred to by a witness for the purpose of refreshing his memory under s. 159 of the Evidence Act.—*Taruck Nath Mullick v. Jeamat Nosya*, I. L. R., 5 Cal. 353. [June 13, 1879.]

THE plaintiff sued, under s. 3, cl. w, of Act XVII. of 1877, for money due on a bond, dated the 8th September 1877. The defendant, though duly summoned, did not appear on the day fixed in the summons, which was for the final disposal of the suit. The Court, therefore, proceeded with it *ex parte*. The defendant, being subsequently summoned and examined as a witness under s. 7 of the Act, admitted the bond sued upon, but pleaded part-payment of the plaintiff's claim. He then applied to the Court that his witnesses should be summoned, and that their evidence be taken in support of his allegation. The Subordinate Judge was of opinion that he (defendant) was not entitled to offer the evidence. On his referring the case to the High Court, *held* that it was his duty to summon the witnesses named by the defendant.—*Dulicand v. Dhondi*, I. L. R., 5 Bom. 184. [Oct. 3, 1880.]

THE first hearing of a suit was fixed for the 12th December 1883, on which day the defendant did not appear, and the case was adjourned to the 18th December, and, as the defendant did not then appear, a decree was passed in favour of the plaintiff. A vakalat-nama had been previously filed on the defendant's part, and he had also objected to an application filed by the plaintiff for attachment of the defendant's property before judgment. *Held* that these acts on the defendant's part did not constitute an "appearance" by him within the meaning of s. 100 of the Civil Procedure Code, which referred to an appearance in answer to a summons to appear and answer the claim on a day specified, issued under s. 64; that the decree was therefore *ex parte* within the meaning of ss. 100 and 108, and an appeal consequently lay to the High Court under s. 583, cl. 9, from an order rejecting an application to set the decree aside. *Zain-ul-abdin Khan v. Ahmad Raza Khan* (I. L. R., 2 All. 67; I. R., 5 Ind. Ap. 233) distinguished. Administrator-General of Bengal v. Dyaram Das (6 B. L. R. 688), *Bhimacharya v. Fakirappa* (4 Bom. H. C. R. 206), and *Bibee Haloo v. Atwaro* (7 W. R. 81), referred to. *Per* Mahmood, J.—That the Court, on the 18th December, seemed to have acted under s. 157 of the Civil Procedure Code, and, choosing the first of the alternative courses allowed by that section, acted under Chapter VII. of the Code, and passed an *ex-parte* decree under the provisions of s. 100 of that chapter.—*Hira Dai v. Hira Lal*, I. L. R., 7 All. 588. [Jan. 29, 1885.]

A DEFENDANT against whom a decree has been passed *ex parte*, and who has not adopted the procedure provided by s. 108 of the Code of Civil Procedure, can appeal from such decree under the general provisions of s. 540. *Lal Singh v. Kunjan* (I. L. R., 4 All. 397) dissented from.—*Karuppan v. Ayyathorai*, I. L. R., 9 Mad. 445. [July 24, 1886.]

THE plaint in a suit described one of the defendants thus: "N C, guardian on behalf of her own minor son, S C." Upon the presentation of the plaint the Court directed the plaintiff to produce an affidavit to the effect that the mother of the minor defendant was his guardian, and, an affidavit having been made that the "minor defendant" was under the guardianship of the mother, ordered a suit to be registered, and summons to be issued on the defendants. N C then filed a written statement, alleging that she held the land in suit on behalf of the minor. Held that, having regard to the orders of the Court and the allegations made in the plaint and written statement, the suit was substantially brought against the minor, and the error of description in the plaint being one of mere form, could not, without proof of prejudice, invalidate a decree against him in the suit. Held also that the want of a formal order appointing a guardian *ad litem* was not fatal to the suit, when it appeared on the face of the proceedings that the Court had sanctioned the appointment. Held (O'Kinealy, J. dissenting) that the fact that an order appointing a guardian *ad litem* at the instance of the plaintiff was made *ex parte* was not necessarily fatal to the suit, unless it could be shown that the minor had in any manner been prejudiced thereby. Per Mitter, J. (Petheran, C.J., concurring) that, although the matter of the appointment of a guardian *ad litem* is left to the discretion of the Court, it is always desirable that the appointment at the instance of the plaintiff should not be made, unless the minor, or his friends and relatives in whose care he may be, failed to move the Court for that purpose within a reasonable time after receiving notice of the institution of the suit.—*Suresh Chunder Wum Chowdhry v. Jugut Chunder Deb*, I. L. R., 14 Cal. 204. [Aug. 14, 1886.]

Extending to
Provincial S.
C. Courts.

101. If the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit, as if he had appeared on the day fixed for his appearance.

THE plaintiff sued, under s. 3, cl. *w*, of Act XVII. of 1877, for money due on a bond, dated the 8th September 1877. The defendant, though duly summoned, did not appear on the day fixed in the summons, which was for the final disposal of the suit. The Court, therefore, proceeded with it *ex parte*. The defendant, being subsequently summoned and examined as a witness under s. 7 of the Act, admitted the bond sued upon, but pleaded part-payment of the plaintiff's claim. He then applied to the Court that his witnesses should be summoned, and that their evidence be taken in support of his allegation. The Subordinate Judge was of opinion that he (defendant) was not entitled to offer the evidence. On his referring the case to the High Court, held that it was his duty to summon the witnesses named by the defendant.—*Dulichand v. Dhondi*, I. L. R., 5 Bom. 184. [Oct. 5, 1880.]

DEFENDANTS, who put in no appearance at the original hearing, and who have subsequently been refused leave to appear and defend, are at liberty, where an *ex-parte* decree has been passed against them, to appeal to a higher Court, without previously taking any steps to have the *ex-parte* decree set aside under s. 108 of Act X. of 1877.—*Ashruftunniss v. Lehareaux*, I. L. R., 8 Cal. 272. [Jan. 23, 1882.]

THE first hearing of a suit was fixed for the 12th December 1883, on which day the defendant did not appear, and the case was adjourned to the 18th December, and, as the defendant did not then appear, a decree was passed in favour of the plaintiff. A vakalat-nama had been previously filed on the defendant's part, and he had also objected to an application filed by the plaintiff for attachment of the defendant's property before judgment. Held that these acts on the defendant's part did not constitute an "appearance" by him within the meaning of s. 100 of the Civil Procedure Code, which referred to an appearance in answer to a summons to appear and answer the claim on a day specified, issued under s. 64; that the decree was therefore *ex parte* within the meaning of ss. 100 and 108, and an appeal consequently lay to the High Court under s. 563, cl. 2, from an order rejecting an application to set the decree aside. *Zain-ul-abdin Khan v. Ahmad Raza Khan* (I. L. R., 3 All. 67; L. R., 5 Ind. Ap. 233) distinguished. *Administrator-General of Bengal v. Dyaram Das* (6 B. L. R. 688), *Bhimacharya v. Fakirappa* (4 Bom. H. C. R. 206), and *Bibee Haloo v. Atwaro* (7 W. R. 81), referred to. Per Mahmood, J.—That the Court, on the 18th December, seemed to have acted under s. 157 of the Civil Procedure Code, and, choosing the first of the alternative courses allowed by that section, acted under Chapter VII. of the Code, and passed an *ex-parte* decree under the provisions of s. 100 of that chapter.—*Hira Dai v. Hira Lal*, I. L. R., 7 All. 336. [Jan. 29, 1886.]

A DEFENDANT, against whom a decree has been passed *ex parte*, and who has not adopted the procedure provided by s. 108 of the Code of Civil Procedure, can appeal from such decree under the general provisions of s. 540. *Lal Singh v. Kunjan* (I. L. R., 4 All. 387) dissented from.—*Karuppan v. Ayyathorai*, I. L. R., 9 Mad. 445. [July 24, 1886.]

102. If the defendant appears, and the plaintiff does not appear, the Court shall dismiss the suit, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

Extending to
Provincial S.
C. Courts.

IN a suit, issues having been settled, the final hearing of the suit was adjourned to a fixed date for final disposal. On that date plaintiff did not appear, and the suit was dismissed. *Held* that, as this was not a case which had been adjourned in favour of either party to enable him to "produce his proofs, or cause the attendance of his witnesses," the order was not one which could properly be made.—*Ryall v. Sherman*, I. L. R., 1 Mad. 287. [Mar. 16, 1877.]

103. When a suit is wholly or partially dismissed under section 102, Decree against plaintiff by default bars fresh suit. The plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside; and, if it be proved that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall set aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

Ditto,

No order shall be made under this section unless the plaintiff has served the defendant with notice in writing of his application.

PER Garth, C.J.—The operation of s. 103 of the Code of Civil Procedure is confined to those cases only where a second suit is brought for the same object and cause of action as the suit which is dismissed.—*Gobind Chunder Addya v. Afzul Rabbani*, I. L. R., 9 Cal. 426. [Dec. 5, 1882.]

IN 1879 the plaintiff purchased from one Bábáji (defendant No. 1) the land in question in the suit which was then in the possession of one Rámchandra (defendant No. 2) as mortgagee. Bábáji undertook to pay off the mortgage, but failed to do so. In 1881 the plaintiff brought a suit for redemption against Rámchandra (defendant No. 2), which was dismissed for non-appearance of the plaintiff under s. 102 of the Civil Procedure Code (Act X. of 1877). He subsequently filed the present suit against Bábáji and Rámchandra to recover possession of the land. The defendant pleaded that the suit was barred under the provisions of s. 103 of the Civil Procedure Code. *Held* that the cause of action in the two suits was different, and that the present suit was not barred.—*Rámchandra Jiváji Tilve v. Khatal Mahomed Gori*, I. L. R., 10 Bom. 28. [Mar. 12, 1885.]

A PLAINTIFF, who had been ordered, under s. 66 of the Civil Procedure Code, to appear in person in Court upon a day specified, failed to appear, and under s. 107, read with s. 102, his suit was dismissed. He then applied to the Court under s. 103 for an order to set the dismissal aside, but his application was rejected. He thereupon preferred an appeal from the decree dismissing the suit under the provisions of s. 540. *Held* that the plaintiff was not entitled to appeal from the decree dismissing the suit, and that his only remedy was by way of an appeal under s. 588 (8) of the Code from the order rejecting the application to set the dismissal aside. *Lal Singh v. Kunjan* (I. L. R., 4 All. 387) referred to.—*Krishna Ram v. Gobind Prasad*, I. L. R., 8 All. 20. [June 14, 1885.]

HELD by the Full Bench (Straight, Offg. C.J., and Tyrrell, J., expressing no opinion) that a respondent, in whose absence the appeal has been heard *ex parte*, and against whom judgment has been given, may prefer a second appeal from the decree under the provisions of s. 584 of the Civil Procedure Code, and his remedy is not limited to an application under s. 560 to the Court which passed the decree to re-hear the appeal. *Ramjas v. Baijnath* (I. L. R., 2 All. 567) approved. *PER* Oldfield, J.—There is a distinction between the case of a defendant in a Court of first instance and that of a respondent in an Appellate Court not appearing with reference to ss. 103 and 560 of the Code. *Lal Singh v.*

Kunjan (I. J. R., 4 All. 387) and Ramshet Bachaset v. Balkishna Ahabhat (6 Bom. H. C. R. 161) referred to. *Per* Mahmood, J.—The distinction is one of detail merely. And not of principle. Lal Singh v. Kunjan (I. L. R., 4 All. 387) dissented from. Zain-ul-ab-din Khan v. Ahmad Raza Khan (I. L. R., 2 All. 67; I. R. 5 Ind. Ap. 233), Jamait-un-nissa v. Iuft-un-nissa (I. L. R., 7 All. 606), Ashruft-un-nissa v. Lehareaux (I. L. R., 8 Cal. 272), Luckmidas Vithalkas v. Ebrahim Oosman (I. L. R., 2 Bom. 644), Anantharama v. Madhava Panikar (I. J. R., 3 Mad. 264), and Modalatha's Case (I. L. R., 2 Mad. 75), referred to. Also *per* Mahmood, J.—Where two procedures or two remedies are provided by statute, one of them must not be taken as operating in derogation of the other.—Ajudhia Prasad v. Balmukund, I. L. R., 8 All. 354. [May 10, 1886.]

Extending to
Provincial S.
C. Courts.

104. If, on the day fixed for the hearing of a suit against a defendant residing out of British India, who has no agent empowered to accept service of summons, or on any day to which the hearing has been adjourned, the defendant does not appear, the plaintiff may apply to the Court for permission to proceed with his suit, and the Court may direct that the plaintiff be at liberty to proceed with his suit in such manner and subject to such conditions as the Court thinks fit.

Procedure where defendant residing out of British India does not appear.

Ditto.

105. If there be more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, and pass such order as it thinks fit.

Procedure in case of non-attendance of one or more several plaintiffs.

Ditto.

106. If there be more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the Court shall, at the time of passing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

Procedure in case of non-attendance of one or more of several defendants.

Ditto.

107. If a plaintiff or defendant, who has been ordered to appear in person under the provisions of section 66 or section 436, does not appear in person, or shew sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing sections applicable to plaintiffs and defendants, respectively, who do not appear.

Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

A PLAINTIFF, who had been ordered, under s. 66 of the Civil Procedure Code, to appear in person in Court upon a day specified, failed to appear, and under s. 107, read with s. 102, his suit was dismissed. He then applied to the Court under s. 103 for an order to set the dismissal aside, but his application was rejected. He thereupon preferred an appeal from the decree dismissing the suit under the provisions of s. 540. Held that the plaintiff was not entitled to appeal from the decree dismissing the suit, and that his only remedy was by way of an appeal under s. 588 (8) of the Code from the order rejecting the application to set the dismissal aside. Lal Singh v. Kunjan (I. L. R., 4 All. 387) referred to.—Krishna Ram v. Gobind Prasad, I. L. R., 8 All. 20. [June 14, 1885.]

• Of setting aside Decrees *ex parte*.

Ditto.

108. In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was made for an order to set it aside ;

Setting aside decree *ex parte* against defendant.

and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the decree upon such terms as to costs, payment into Court, or otherwise, as it thinks fit, and shall appoint a day for proceeding with the suit.

AN *ex parte* decree having been granted in a suit against A personally and as guardian of her infant sons, the infants subsequently applied under s. 119 of Act VIII. of 1859 to set aside the decree, on the ground that the summons had not been duly served. It was proved that the summons had been duly served upon A, and the application was dismissed. On appeal to the High Court, *held* that, although so far as the decrees made A personally liable, the Court had no power to interfere, yet as the infants were not responsible for their non-appearance, it might be said that they had been prevented by "sufficient cause from appearing," and that the decrees might be set aside under s. 119 of Act VIII. of 1859 (s. 108 of Act X. of 1877) as against them.—*Kesho Pershad v. Hirday Narain*, 6 C. L. R. 69. [1880.]

UNDER s. 540 of the Civil Procedure Code an appeal lies from decrees passed *ex parte*. If a defendant appears at the first hearing, and files a written statement, he should not be placed *ex parte*.—*Anantharama Patter v. Madhava Paniker*, 1. L. R., 3 Mad. 26. [Sep. 8, 1881.]

DEFENDANTS, who put in no appearance at the original hearing, and who have subsequently been refused leave to appear and defend, are at liberty, where an *ex parte* decree has been passed against them, to appeal to a higher Court, without previously taking any steps to have the *ex parte* decree set aside under s. 108 of Act X. of 1877.—*Ashruft-unnessa v. Lehareaux*, 1. L. R., 8 Cal. 272. [Jan. 23, 1882.]

HELD by Stuart, C.J., and Straight and Tyrrell, JJ. (Oldfield and Brodhurst, JJ., dissenting), that a defendant against whom a decree has been passed *ex parte*, and who has not adopted the remedy provided by s. 108 of the Civil Procedure Code, cannot appeal from such decree under the general provisions of s. 540.—*Lal Singh v. Kunjan*, 1. L. R., 4 All. 387. [April 27, 1882.]

AN *ex parte* decree was obtained against a defendant, who applied to have it set aside under s. 108 of the Civil Procedure Code. The application was made more than thirty days from the date of attaching the defendant's property in execution of the decree, but within thirty days of the service of the sale-proclamation. *Held* that the application was barred by limitation under art. 161, sch. 2, Act XV. of 1877.—In the Matter of Bhaobunessury; *Bhaobunessury v. Judobendra Narain Mullick*, 1. L. R., 9 Cal. 869. [June 20, 1882.]

THE only proper mode of dealing with cases, whether a regular suit or a miscellaneous proceeding, when the parties do not appear, is to dismiss it. A case so dismissed can be restored on application under s. 108, which is, by s. 617, applicable as well to execution-proceedings as to suits and appeals.—*Biswas Sonan Chunder Gossyamy v. Bhanda Chunder Dibingar Adhikar Gossyamy*, 1. L. R., 10 Cal. 416. [Feb. 14, 1884.]

A DEFENDANT failing to comply with an order to answer interrogatories, the Court, under s. 136 of the Civil Procedure Code, struck out his defence, and, proceeding *ex parte*, passed a decree against him. *Held* that the decree could not be treated in respect of the remedy by appeal, as an *ex parte* decree, and therefore, under the ruling in *Lal Singh v. Kunjun* (1. L. R., 4 All. 387), not appealable, but that an appeal would lie from the decree.—*Chunni Lal v. Chamman Lal*, 1. L. R., 7 All. 159. [Nov. 1, 1884.]

THE first hearing of a suit was fixed for the 12th December 1883, on which day the defendant did not appear, and the case was adjourned to the 18th December, and, as the defendant did not then appear, a decree was passed in favour of the plaintiff. A vakalat-nama had been previously filed on the defendant's part, and he had also objected to an application filed by the plaintiff for attachment of the defendant's property before judgment. *Held* that these acts on the defendant's part did not constitute an "appearance" by him within the meaning of s. 100 of the Civil Procedure Code, which referred to an appearance in answer to a summons to appear and answer the claim on a day specified, issued under s. 64; that the decree was, therefore, *ex parte* within the meaning of ss. 100 and 108, and an appeal consequently lay to the High Court under s. 583, cl. 9, from an order rejecting an application to set the decree aside. *Zain-ul-Ab-din Khan v. Ahmad Raza Khan* (1. L. R., 2 All. 67; 1. L. R., 5 Ind. Ap. 233) distinguished. Administrator-General of Bengal v. Dyaram Das (6 B. L. R. 688), *Bhimacharya v. Fakirappa* (4 Bom. H. C. R. 206), and *Biboo Halgo v. Atwaro* (7 W. R. 81), referred to. *Per* Mahmood, J.—That the Court, on the 18th December, seemed to have acted under s. 157 of the Civil Procedure Code, and, choosing the first of the alternative courses allowed by that section, acted under Chapter VII. of the Code, and passed an *ex parte* decree under the provision of s. 100 of that chapter.—*Hira Dai v. Hira Lal*, 1. L. R., 7 All. 638. [Jan. 29, 1885.]

A MURDER, before whom a suit was pending, fixed, by way of adjournment, a particular date for its disposal. Upon the date so fixed it was necessary to take evidence upon issues of fact which had previously been settled. The plaintiffs appeared on that day.

The defendants did not appear, but there was in Court a pleader who had been instructed by the two principal defendants at the outset, and who had filed his *vakalatnāma*. There was nothing to show that he had ever received any other instructions whatever, either as to the facts of the case or the conduct of the defence, or that the defendants had done anything beyond giving the pleader the instructions above referred to. Under these circumstances, the plaintiffs gave their evidence, and the Munsif decreed the claim. *Held* that, under the circumstances stated, the defendants' pleader must be taken not to have been in Court on the date fixed for the purpose of defending the suit on behalf of the defendants, inasmuch as, upon that part of the case, he had not been instructed; that it was therefore a fair inference that the defendants did not appear, and the case was disposed of under s. 157 of the Civil Procedure Code; and that, under these circumstances, the provisions of s. 108 were applicable, and the decree was an *ex parte* decision, which it was open to the Munsif to reconsider. *Hira Dai v. Hira Lal* (I. L. R., 7 All. 538) followed.—*Ramtahal Ram v. Rameshar Ram*, I. L. R., 8 All. 140. [Jan. 9, 1886.]

HELD by the Full Bench (Straight. Offg. C.J., and Tyrrell, J., expressing no opinion), that a respondent, in whose absence the appeal has been heard *ex parte*, and against whom judgment has been given, may prefer a second appeal from the decree under the provisions of s. 584 of the Civil Procedure Code, and his remedy is not limited to an application under s. 560 to the Court which passed the decree to re-hear the appeal. *Ramjas v. Baijnath* (I. L. R., 2 All. 567) approved. *Per* Oldfield, J.—There is a distinction between the case of a defendant in a Court of first instance and that of a respondent in an Appellate Court not appearing with reference to ss. 108 and 560 of the Code. *Lal Singh v. Kunjan* (I. L. R., 4 All. 387) and *Ramshet Bachaset v. Balkishna Ababhat* (6 Bom. H. C. R. 161) referred to. *Per* Mahmood, J.—The distinction is one of detail merely, and not of principle. *Lal Singh v. Kunjan* (I. L. R., 4 All. 387) dissented from. *Zain-ul-ab-din Khan v. Ahmad Raza Khan* (I. L. R., 2 All. 67; L. R. 5 Ind. Ap. 233), *Jamait-un-nissa v. Lutf-un-nissa* (I. L. R., 7 All. 606), *Ashruff-un-nissa v. Lehareaux* (I. L. R., 8 Cal. 272), *Luckimdas Vithaldas v. Ebrahim Qosman* (I. L. R., 2 Bom. 644), *Anantharama v. Madhava Panikar* (I. L. R., 3 Mad. 264), and *Modalatha's Case* (I. L. R., 2 Mad. 75), referred to. Also *per* Mahmood, J.—Where two procedures or two remedies are provided by statute, one of them must not be taken as operating in derogation of the other.—*Ajudhia Prasad v. Balmukand*, I. L. R., 3 All. 354. [Mar. 10, 1886.]

A DEFENDANT against whom a decree has been passed *ex parte*, and who has not adopted the procedure provided by s. 108 of the Code of Civil Procedure, can appeal from such decree under the general provisions of s. 540. *Lal Singh v. Kunjan* (I. L. R., 4 All. 387) dissented from.—*Karuppan v. Ayyathorai*, I. L. R., 9 Mad. 445. [July 24, 1886.]

Extending to
Provincial S.
C. Courts.

No decree to be set aside
without notice to, opposite
party.

109. No decree shall be set aside on any such application as aforesaid, unless notice thereof in writing has been served on the opposite party.

CHAPTER VIII.

OF WRITTEN STATEMENTS AND SET-OFF.

Ditto.

110. The parties may, at any time before or at the first hearing of the suit, tender written statements of their respective cases, and the Court shall receive such statements, and place them on the record.

THIS section contemplates that a defendant shall, in his written statement, set forth the case he intends to make at the trial.—*Chová Kára v. Isabin Khalifa*, I. L. R., 1 Bom. 209. [Aug. 31, 1875.]

In a suit for wrongful dismissal, in which the defendants pleaded justification by reason of the plaintiff's misconduct, *held*: (1) That the defendants at the hearing could not give evidence of a transaction involving instances of misconduct not set forth in their written statement. They should either have filed a supplemental written statement before the hearing, or have furnished the plaintiff with particulars of the misconduct in question, and intimated to him their intention of relying on the transaction as going to establish the general allegation of misconduct. (2.) That although the transaction in question could not be made the subject-matter of an auxiliary issue, the evidence of it, as such, could not be received, yet that questions relating to it might be put to the plaintiff in

cross-examination for the purpose of affecting his credit. Supplemental written statements cannot be filed after the parties have entered upon their case at the hearing. Statements laid by clients before Counsel for the purpose of obtaining legal advice are privileged. A was employed by B, at intervals of a week or fortnight, to write up B's account-books, B furnishing him with the necessary information either orally or from loose memoranda. *Held* that the entries so made could not be given in evidence to contradict A, under s. 145 of the Indian Evidence Act, as previous statements made by him in writing. The statements were really made, not by A, but by B, under whose instructions A had written them. *Held also* that it is only such books as are entered up as transactions take place that can be considered as books regularly kept in the course of business with s. 34 of the Indian Evidence Act.—*Munchershaw Bezouji v. New Dhurumsey Spinning and Weaving Company*, I. L. R., 4 Bom. 576. [Aug. 12, 1880.]

A WRITTEN statement of his case, tendered by a party to a suit at any time before or at the first hearing of the suit, is not liable to any court-fee, and may be written on plain paper (s. 110 of Act X. of 1877). A written statement called for by the Court after the first hearing is also exempt from stamp-duty (s. 19 of Act VII. of 1870).—*Nagu v. Yeknath*, I. E. R., 5 Bom. 400. [Mar. 23, 1881.]

III. If in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, and if, in such claim of the defendant against the plaintiff, both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards, unless permitted by the Court, tender a written statement containing the particulars of the debt sought to be set-off.

Extending to Provincial S. C. Courts.

The Court shall thereupon inquire into the same, and if it finds that the case fulfils the requirements of the former part of this section, and that the amount claimed to be set-off does not exceed the pecuniary limits of its jurisdiction, the Court shall set-off the one debt against the other.

Such set-off shall have the same effect as a plaint in a cross-suit, so as to enable the Court to pronounce a final judgment in the same suit, both in the original and on the cross-claim; but it shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

Illustrations.

(a.) A bequeaths Rs. 2,000 to B, and appoints C his executor and residuary legatee. B dies, and D takes out administration to B's effects. C pays Rs. 1,000 as surety for D. Then D sues C for the legacy. C cannot set-off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.

(b.) A dies intestate and in debt to B. C takes out administration to A's effects, and B buys part of the effects from C. In a suit for the purchase-money by C against B, the latter cannot set-off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.

(c.) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods, and is liable to him in compensation, which he claims to set-off. The amount, not being ascertained, cannot be set-off.

(d.) A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1,000. The two claims, being both definite pecuniary demands, may be set-off.

(e.) A sues B for compensation on account of a trespass. B holds a promissory note for Rs. 1,000 from A, and claims to set-off that amount against any sum that A may recover in the suit. B may do so, for as soon as A recovers, both sums are definite pecuniary demands.

(f.) A and B sue C for Rs. 1,000. C cannot set-off a debt due to him by A alone.

(g.) A sues B and C for Rs. 1,000. B cannot set-off a debt due to him alone by A.

(h.) A owes the partnership-firm of B and C Rs. 1,000. B dies, leaving C surviving. A sues C for a debt of Rs. 1,500 due in his separate character. C may set-off the debt of Rs. 1,000.

THE usufructuary mortgagee of certain lands sued the mortgagor for the money due under the mortgage.* The mortgagor alleged that the mortgagee had committed waste, and was liable to him for compensation, which he claimed to set-off. *Held* that, under Act X. of 1877, s. 111, the amount of such compensation could not be set-off.—*Raghu Nath Das v. Ashraf Husain Khan*, 1. L. R., 2 All. 252. [Mar. 25, 1879.]

WHERE there is a debt due from an insolvent prior to his insolvency to another from whom there was a debt which was in dispute due to the insolvent, in a suit brought by the Official Assignee to recover the latter debt, the defendant is entitled, under s. 39 of the Insolvent Act, 11 and 12 Vic. cap. 21, to set-off the debt due from him to the insolvent, against sums which may be claimed from him.—*Miller (A. B.) v. Beer (A.)*, 6 C. L. R. 294. [April 1, 1880.]

THE provisions of Act X. of 1877 do not give the right to set-off claims for unliquidated damages, but that Act does not take away any right of set-off, whether legal or equitable, which parties to a suit would have independently of its provisions. Where, in a suit for the price of goods sold and delivered, the defendant admitted that there was a sum of Rs. 1,159-12 due by him to the plaintiff, but sought to set-off the sum of Rs. 972 as damages sustained by him by reason of the non-delivery of some of the goods contracted for, *held* that as the claim of the defendant against the plaintiff was connected with the same transaction, and arose out of one and the same contract as that in respect of which the plaintiff's suit was brought, and as the amount of the defendant's claim was capable of being immediately ascertained, the defendant might set-off his claim.—*Kishorchand Champalal v. Madhoy Visram*, 1. L. R., 4 Bom. 107. [July 12, 1880.]

THE heirs to M, deceased, appointed A, one of the heirs, manager of M's estate with a view to the payment of the debts due by the deceased. A creditor of the deceased sued his heirs to recover his debt, and obtained a decree, in execution of which the share of Z, one of the heirs in M's landed estate, was sold. The sale-proceeds exceeded Z's share of such debt, and she sued the other heirs for contribution in respect of the difference. The defendants claimed a set-off in respect of Z's share of the liabilities of M's estate which had been satisfied by A as manager. *Held* that the set-off claimed could not be entertained in such suit.—*Abdul Hasan v. Zohra Jan*, 1. L. R., 5 All. 299. Feb. 3, 1883.]

A SUIT was brought by P against the Elgin Mills Company for recovery of the price of wood supplied under two contracts, each of which contained a clause by which the plaintiff contracted to indemnify the defendants for loss arising by reason of failure on his part to supply the wood as contracted for. No wood was supplied after the 11th November 1879. The suit was brought on the 10th October 1882. In January 1883, the partners of the Elgin Mills Company were, on their own application, brought upon the record as defendants. Defendants claimed a set-off as damages for loss incurred by the plaintiff's failure to supply all the wood contracted for, such loss having arisen on the 25th October 1879, and subsequently. *Held* that art. 53, and not art. 52, sch. ii., of the Limitation Act, was applicable to the plaintiff's claim, the intention of the parties having been that the price of wood was not claimable as of right on the date of its being supplied, but rather when the contract was completed by the whole wood being supplied, or when the contract came to an end. *Held* that although, taking the word "ascertain" to mean "liquidated," the claim of the defendants for damages would not come within the meaning of a set-off under s. 111 of the Civil Procedure Code, that section was one regulating procedure, and was not intended to take away any right of set-off, whether legal or equitable, which parties would have had independently of its provisions; that the right of set-off would be found to exist not only in cases of mutual debts and credits, but also where the cross-demands arose out of one and the same transaction, or were so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant be driven to a cross-suit, and that as, in the present case, the claim sprang out of the same contract which the plaintiff ought to enforce, and could readily be determined in the same suit, it was equitable that it should be so determined.—*Gauri Sahai v. Ram Sahai* (N. W. P. H. C. Rep. 1875, p. 157), *Kistnasamy Pillay v. The Municipal Commissioner of Madras* (4 Mad. H. C. Rep. 120), and *Kishor*

Chand Champa Lal v. Madhowji Visram (I. L. R., 4 Bom. 407), followed. *Held* that the law of limitation applicable to the set-off was art. 83, sch. ii., of the Limitation Act; that limitation would run from the time when the plaintiff was actually damaged, and should be reckoned to the date of the institution of the suit, and not to that of claiming the set-off, which was after the defendant's names were brought on the record; and that the set-off was therefore in time. *Walker v. Clements* (15 Q. B. 1046) referred to. *Per* Oldfield, J.—That the excess of the set-off in favour of the defendants over and above the claim of the plaintiff might properly be decreed to them, and that the set-off should be allowed, if at all, to its full extent, and not merely to the extent of defeating the claim. *Per* Duthoit, J.—That although the set-off might properly be admitted as an equitable protection to the defendants against being cast in the plaintiff's suit, the defendants could not, failing the provisions of s. 111 of the Civil Procedure Code, be allowed to recover sums of money from the plaintiff, they having paid no court-fees on that account. *Held* that s. 22 of the Limitation Act refers to cases where a new defendant is substituted or added, and that when the partners of the Elgin Mills Company were brought on the record as defendants in January 1883, there was no institution or addition of new defendants, the defendants having been comprised in the designation of Elgin Mills Company, and at most what was done was to correct a misdescription.—*Prag Lal v. Maxwell*, I. L. R., 7 All. 284. [Jan. 15, 1885.]

THE provision of the Civil Procedure Code (Act XIV. of 1882), s. 111, does not take away from parties any right to set-off, whether legal or equitable, which they would have had independently of that Code. And such right exists not only in cases of material debts and credits, but also where cross-demands arise out of the same transaction, or are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover, and the defendant should be driven to a cross-suit. Where, therefore, a decree had been obtained against certain persons in respect of arrears of rent of an *ijara* held jointly by them, and one of them having been forced to pay the whole amount of decree sued the others for contribution, and when in such suit the defendants pleaded that, although the plaintiff had paid off the whole of the decree in question, he was not entitled to recover any portion from them, inasmuch as he was indebted to them for his share of the *ijara* rents, the whole of which had been paid by them to the zamindar in previous years, as well as in respect of rent due to them for the share on account of a portion of the land which he himself held in *nij jote*, and for which he had paid no rent, and that, on accounts being gone into, it would be found that their claim exceeded that of the plaintiff, *held*, following *Clark v. Ruthnavaloo Chetti* (2 Mad. H. C. 296), and *Kishorechand Champa Lal v. Madhowji Visram* (I. L. R., 4 Bom. 407), that, notwithstanding the provisions of s. 111 of the Civil Procedure Code, the defendants' claim for the share of rents paid by them to the zamindar on account of the same *ijara* might properly be pleaded as a set-off, and be taken into account in determining the plaintiff's suit as arising out of the same transaction, but that their claim for rent for the portion of the lands held by the plaintiff in *nij jote* could not be treated in such manner, but must form the subject-matter of a separate suit.—*Bhagbat Panda v. Banded Panda*, I. L. R., 11 Cal. 557. [May 12, 1885.]

IN a suit by a landlord against his tenant for ejectment, the defences were: (1) no notice to quit had been served; and (2) the tenure was a permanent one. The suit was dismissed on the first ground; the Court holding at the same time that the tenure was not a permanent one. In a subsequent suit for ejectment from the same holding, brought by the same plaintiff against the same defendant, the defences were: (1) the tenure was permanent; and (2) the plaintiff was estopped by the conduct of his predecessor in title from asserting as against the defendant that the tenure was not a permanent one. The lower Appellate Court found the question of estoppel in favour of the defendant, and dismissed the suit. On appeal to the High Court, *held* that the decision was right, and must be affirmed. *Seemle*, that where a former suit between the same parties in respect of the same subject-matter has been dismissed on a preliminary point, a finding in that suit on the merits in the plaintiff's favour will not bar the defendant from putting forward the same defence on the merits in a subsequent suit by the same plaintiff against the same defendant. *Seemle*, that the case of *Niamut Khan v. Phadu Buldia* (I. L. R., 6 Cal. 319) has been implicitly overruled by the case of *Ran Bahadoor Singh v. Lucho Koor* (I. L. R., 12 I. A. 25; I. L. R., 11 Cal. 301).—*Nundo Lal Bhuttacharjee v. Bidhoo Mookhy Debee*, I. L. R., 11 Cal. 17. [Mar. 9, 1886.]

No written statement to be received after first hearing.

112. Except as provided in the last preceding section, no written statement shall be received after the first hearing of the suit: Extending to Provincial S. C. Courts.

Provided that the Court may, at any time, require a written statement or additional written statement from any of the parties, and fix a time for presenting the same.

Provisoes.

Provided also that a written statement, or an additional written statement, may, with the permission of the Court, be received at any time for the purpose of answering written statements so required and presented.

Extending to
Provincial S.
C. Courts.

113. If any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

Procedure when party fails to present written statement called for by Court.

Ditto.

114. Written statements shall be as brief as the nature of the case admits, and shall not be argumentative, but shall be confined as much as possible to a simple narrative of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he either admits or believes he will be able to prove.

Every such statement shall be divided into paragraphs numbered consecutively, and each paragraph containing, as nearly as may be, a separate allegation.

Ditto.

115. Written statements shall be signed and verified in the manner hereinbefore provided for signing and verifying plaints, and no written statement shall be received unless it be so signed and verified.

Written statements to be signed and verified.

Ditto.

116. If it appears to the Court that any written statement, whether called for by the Court or spontaneously tendered, is argumentative or prolix, or contains matter irrelevant to the suit, the Court may amend it then and there, or may, by an order to be endorsed thereon, reject the same, or return it to the party by whom it was made for amendment within a time to be fixed by the Court, imposing such terms as to costs or otherwise as the Court thinks fit.

Attestation of amendments.

When any amendment is made under this section, the Judge shall attest it by his signature.

When a statement has been rejected under this section, the party making it shall not present another written statement, unless it be expressly called for or allowed by the Court.

Effect of rejection.

CHAPTER IX.

OF THE EXAMINATION OF THE PARTIES BY THE COURT.

Ditto.

117. At the first hearing of the suit, the Court shall ascertain from the defendant or his pleader whether he admits or denies the allegations of fact made in the plaint, and shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the written statement (if any) of the opposite party, and as are not, expressly or by necessary implication, admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

Ascertainment whether allegations in plaint and written statements admitted or denied.

118. At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the Court; and the Court may, if it thinks fit, put, in the course of such examination, questions suggested by either party. Extending to Provincial S. C. Courts.

Oral examination of party, or companion of himself or his pleader.

119. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

120. If the pleader of any party who appears by a pleader refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day, and direct that such party shall appear in person on such day. Extending to Provincial S. C. Courts.

Consequence of refusal or inability of pleader to answer.

If such party fails, without lawful excuse, to appear in person on the day so appointed, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

CHAPTER X.

OF DISCOVERY, AND OF THE ADMISSION, INSPECTION, PRODUCTION, IMPOUNDING, AND RETURN OF DOCUMENTS.

121. Any party may, at any time, by the leave of the Court, deliver, through the Court, interrogatories in writing for the examination of the opposite party, or, where there are more opposite parties than one, any one or more of such parties, with a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer : Ditto.

Power to deliver interrogatories.

Provided that no party shall deliver more than one set of interrogatories to the same person without the permission of the Court, and that no defendant shall deliver interrogatories for the examination of the plaintiff unless such defendant has previously tendered a written statement, and such statement has been received and placed on the record.

S. 121 of the Code of Civil Procedure contemplates (1) leave to interrogate, and (2) the service of the interrogatories through the Court. It is the duty of the Court under that section to determine whether the applicant should be allowed to interrogate the other side, but not to determine at that stage what question the party interrogated should be compelled to answer. Where an *ex-parte* order is made in chambers giving leave to interrogate, the party ordered to answer has a right to come into Court to have the order set aside if the case is one in which interrogatories should not have been allowed. When an order for the administration of interrogatories is properly made, a party objecting to the interrogatories administered may, at his peril, omit to answer the interrogatories to which he objects; but the more prudent course is to file his affidavit in answer, stating in it his objections to answer such questions as he objects to. Where interrogatories are scandalous, or in any way an abuse of the process of the Court, the Court may interfere at any stage. The power given to the Court by s. 36 should not be exercised except in extreme cases.—*Sham Kishore Mundle v. Shoshiboosun Biswas*, I. L. R., 5 Cal. 707. [Jan. 29, 1880.]

Where a guardian *ad litem* of a lunatic defendant was made a party defendant for purposes of discovery, held that the discovery was not intended to include the right to administer interrogatories to him.—*Waghji Thackersey v. Khatso Rowji*, I. L. R., 10 Bom. 167. [Feb. 13, 1886.]

Extending to
Provincial S.
C. Courts.

122. Interrogatories delivered under section 121 shall be served on the pleader (if any) of the party interrogated, or in the manner hereinbefore provided for the service of summons, and the provisions of sections 79, 80, 81, and 82, shall, in the latter case, apply, so far as may be practicable.

Ditto.

123. The Court, in adjusting the costs of the suit, shall, at the instance of any party, inquire or cause inquiry to be made into the propriety of delivering such interrogatories; and if it thinks that such interrogatories have been delivered unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

Ditto.

124. If any party to a suit be a body corporate or a joint-stock company, whether incorporated or not, or any other body of persons empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply to the Court for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.

Ditto.

125. Any party called upon to answer interrogatories, whether by himself or by any such member or officer, may refuse to answer any interrogatory on the ground that it is irrelevant, or is not put *bona fide* for the purposes of the suit, or that the matter inquired after is not sufficiently material at that stage of the suit, or on any other like ground.

Ditto.

126. Interrogatories shall be answered by affidavit to be filed in Court within ten days from the service thereof, or within such further time as the Judge may allow.

Ditto

127. If any person interrogated omits or refuses to answer, or answers insufficiently, any interrogatory, the party interrogating may apply to the Court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer, or to answer further, either by affidavit or by *viva voce* examination, as the Judge may direct: Provided that the Judge shall not require an answer to any interrogatory which in his opinion need not have been answered under section 125.

Ditto.

128. Either party may, by a notice through the Court, within a reasonable time not less than ten days before the hearing, require the other party to admit (saving all just exceptions to the admissibility of such document in evidence) the genuineness of any document material to the suit.

The admission shall also be made in writing, signed by the other party or his pleader, and filed in Court.

If such notice be not given, no costs of proving such document shall be allowed, unless the Judge otherwise orders.

If such notice is not complied with within four days after its being served, and the Judge thinks it reasonable that the admission should have been made, the party refusing shall bear the expense of proving such document, whatever may be the result of the suit.

Ditto.

129. The Court may, at any time during the pendency therein of any suit, order any party to the suit to declare by affidavit all the documents which are or have been

Power to order discovery of document.

in his possession or power relating to any matter in question in the suit, and any party to the suit may, at any time before the first hearing, apply to the Court for a like order.

Every affidavit made under this section shall specify which (if any) Affidavit in answer to such of the documents therein mentioned the declarant order. objects to produce, together with the grounds of such objection.

IN a suit brought by two Mahomedan *parda-nashin* ladies for recovery of immovable property by right of inheritance, an order was passed under s. 129 of the Civil Procedure Code, requiring the plaintiffs to declare by affidavit "all the papers connected with the points at issue in the case which were or had been in their possession or control." After some ineffectual proceedings, the plaintiffs were peremptorily ordered to file their affidavit on a certain date. On that date an affidavit was filed on their behalf by their brother and mukhtar, with a list of their documentary evidence; but the affidavit and list was considered defective upon several grounds, one of which was that it ought to have been made by the plaintiffs personally. Further time was then given to the plaintiffs to amend these defects, and ultimately they filed an affidavit purporting to be made by them personally, praying that the Court would have it verified in any manner thought proper, provided that their *parda-nashini* were not interfered with. The Court, under s. 136 of the Code, dismissed the suit for want of prosecution, in consequence of the orders under s. 129 not having been complied with, though ample opportunity had been given to the plaintiffs and no sufficient ground for non-compliance had been shown. *Held*, without going into the question of the sufficiency or non-sufficiency of the action of the plaintiffs with regard to the orders made under s. 129 of the Code, that, looking at the disabilities of the plaintiffs and the circumstances of their suit, the case was not one in which it was expedient to enforce the liability to which they might have exposed themselves under the peculiar provisions of s. 136.—*Kalian Bibi v. Safdar Husain Khan*, I. L. R., 8 All. 265. [April 2, 1886.]

130. The Court may, at any time during the pendency therein of any suit, order the production by any party thereof of documents during suit. to of such of the documents in his possession or power relating to any matter in question in such suit or proceeding as the Court thinks right; and the Court may deal with such documents when produced in such manner as appears just. Extending to Provincial S. C. Courts.

UNDER s. 130 of the Civil Procedure Code (Act X. of 1877), a Judge has no discretion to refuse to allow inspection of documents relating to matters in question in a suit, provided they are not privileged. Confidential communications between principal and agent relating to matters in a suit are not privileged. *Held* in a suit for an injunction to restrain the defendant from using certain trade-marks, that telegrams and letters between the plaintiff's firm in London and their managing agent in Bombay, relating to the subject-matter of the suit, were not privileged.—*Bustros v. White* (L. R., 1 Q. B. D. 423) and *Anderson v. Bank of British Columbia* (L. R., 2 Ch. D. 644) followed.—*Wallace* (L. A.) v. *Jefferson* (F. G.), I. L. R., 2 Bom. 453. [Feb. 15, 1878.]

UNDER s. 622 of the Code of Civil Procedure, interlocutory orders passed under s. 387 refusing applications for the issue of a commission to examine witnesses, or, under s. 130, directing the production of documents, cannot be revised.—*In re Nizam of Hyderabad*, I. L. R., 9 Mad. 256. [Feb. 22, 1886.]

131. Any party to a suit may, at any time before or at the hearing thereof, give notice through the Court to any other party to produce any specified document for the inspection of the party giving such notice or of his pleader, and to permit such party or pleader to take copies thereof. Ditto.

No party failing to comply with such notice shall afterwards be at liberty to put any such document in evidence on his behalf in such suit, unless he satisfies the Court that such document relates only to his own title, or that he had some other and sufficient cause for not complying with such notice.

Extending to
Provincial S.
C. Courts.

132. The party to whom such notice is given shall, within ten days from the receipt thereof, deliver through the Court to the party giving the same a notice stating a time, within three days from such delivery, at which the documents, or such of them as he does not object to produce, may be inspected at his pleader's office or some other convenient place, and stating which (if any) of the documents he objects to produce, and on what grounds.

DEFENDANT was owner of certain cotton-ginning factories at and near A in the mufassal, and had also a place of business in Bombay. He entered into a contract in Bombay with the plaintiff to gin certain cotton of the plaintiff's at the said factories of the defendant in the mufassal. Plaintiff brought a suit for damages for the breach of this contract, and demanded inspection, in Bombay, of all the defendant's books relating to the business of the said ginning factories belonging to the defendant. The defendant was willing to give the inspection asked for, but contended that it should be had at A, where all the books in question were kept, and objected to bringing the books down to Bombay, as demanded by the plaintiff. *Held* that the contract, though made in Bombay, having been intended to be performed at a considerable distance from Bombay, at and near A, where the business of ginning was conducted, and where the books relating to the said business were kept, A was the proper place at which to give inspection.—*Kewaldas Bákarchaud v. Pestonji Nasservánji*, I. L. R., 5 Bom. 467. [July 9, 1881.]

Ditto.

133. If any party served with notice under section 131 omits to give Application for order of notice under section 132 of the time for inspection, inspection. or objects to give inspection, or names an inconvenient place for inspection, the party desiring it may apply to the Court for an order of inspection.

BEFORE the Court will make an order under s. 133 of the Code of Civil Procedure, the preliminary steps mentioned in s. 131 must be taken by the party applying for the order.—*Mohendro Nauth Datta v. Ishun Chunder Dawn*, I. L. R., 10 Cal. 56. [June 1883.]

LETTERS written by one of the defendant's servants to another, for the purpose of obtaining information with a view to possible future litigation, are not privileged, even though they might, under the circumstances, be required for the use of the defendant's solicitor. In order that privilege may be claimed, it must be shown on the face of the affidavit that the documents were prepared or written merely for the use of the solicitor.—*Bipros Doss Dey v. Secretary of State for India in Council*, I. L. R., 11 Cal. 655. [May 21, 1885.]

Ditto.

134. Except in the case of documents referred to in the plaint, written statement, or affidavit of the party against whom Application to be founded on affidavit. the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit, shewing (a) of what documents inspection is sought; (b) that the party applying is entitled to inspect them, and (c) that they are in the possession or power of the party against whom the application is made.

Ditto.

135. If the party, from whom discovery of any kind or inspection is sought objects to the same or any part thereof, and if the Court is satisfied that the right to such discovery or inspection depends on the determination of any issue or question in dispute in the suit, or that, for any other reason, it is desirable that any such issue or question should be determined before deciding upon the right to the discovery or inspection, the Court may order that the issue or question be determined first, and reserve the question as to the discovery or inspection.

THE intention of s. 135 of the Civil Procedure Code (Act X. of 1877) is to give the Court the power of raising and determining an issue for the exclusive purpose of deciding the right to discovery of evidence which is to be used at the trial, and therefore, from the

nature of the case, before the hearing of the cause. It should be a rule of practice that when an order is made under s. 135 of the Civil Procedure Code (Act X. of 1877) by the Judge in chambers, the suit should be set down for the trial of the particular issue as well as of the cause itself when it comes to a hearing before the same Judge.—*Ahmedbhoy Hubibbhoy v. Vulleebhoy Cassumbhoy*, 1. L. R., 6 Bom. 572. [Sep. 5, 1882.]

IN a suit for specific performance of a contract to purchase an indigo-factory, the defendant denied that the agreement relied on was final, and alleged that the plaintiff had induced him to sign the agreement by means of representations regarding the nature, the extent, the value, and the net income of the property, all of which representations the defendant charged were false and fraudulent to the knowledge of the plaintiff. The plaintiff in his affidavit of documents set out a list of title-deeds evidencing his title to, and the books of accounts and other papers and documents relating to, the property agreed to be purchased, and these he claimed to withhold from the defendant's inspection, on the ground that they were not sufficiently material at that stage of the suit. *Held* that the documents were not protected.—*Sutherland v. Singhee Churn Dutt*, 1. L. R., 10 Cal. 808. [June 16, 1884.]

136. If any party fails to comply with any order under this chapter, Extending to Provincial S. C. Courts.

Consequences of failure to to answer interrogatories, or for discovery, production, or inspection, which has been duly served, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence (if any) struck out, and to be placed in the same position as if he had not appeared and answered;

and the party interrogating, or seeking discovery, production, or inspection, may apply to the Court for an order to that effect, and the Court may make such order accordingly.

Any party failing to comply with any order under this chapter, to answer interrogatories, or for discovery, production, or inspection, which has been served personally upon him, shall also be deemed guilty of an offence under section 188 of the Indian Penal Code.

THE powers given to the Court by Act X. of 1877, s. 136, should not be exercised except in extreme cases.—*Sham Kishore Mundle v. Shoshiboosun Biswas*, 1. L. R., 5 Cal. 707. [Jan. 29, 1880.]

Under the authority conferred by the Charters of the Supreme Courts, and continued by their own Letters Patent, the High Courts in India possess the power of enforcing obedience to their orders by committal for contempt. As regards the High Courts in India, the remedies provided by s. 136 of the Civil Procedure Code (Act X. of 1877) in cases of disobedience to an order of Court may be regarded as cumulative. They subject the offender to particular liabilities for his contumacy, but do not extinguish the Court's power of constraining him to obedience. An application may properly be made in Court to commit for contempt of an order made in chambers.—*Hassoubhoy v. Cowasji Jehagir*, 1. L. R., 7 Bom. 1. [Mar. 10, 1881.]

THE High Courts in India possess the power of enforcing obedience to their orders by attachment for contempt. An order for attachment for contempt is not an order in exercise of the High Court's civil jurisdiction, and therefore does not come within the provision of s. 591 of the Civil Procedure Code. Contempts are in the nature of offences, and therefore, under s. 15 of the Letters Patent, 1865, an appeal lies from an order of committal for contempt. In dealing with an appeal from such an order, the Appellate Court will not go behind the order the disobedience to which constitutes the contempt.—*Navivahoo v. Narotamdás*, 1. L. R., 7 Bom. 5. [Sep. 8, 1882.]

WHERE a defendant neglects to comply with an order for production and inspection, the Court will, although in the last resort, order his defence to be struck out.—*Khajah Asanoolla Joo v. Khajah Abdool Aziz*, 1. L. R., 9 Cal. 923. [July 23, 1883.]

A DEFENDANT failing to comply with an order to answer interrogatories, the Courts under s. 136 of the Civil Procedure Code, struck out his defence, and proceeding *ex parte*, passed a decree against him. *Held* that the decree could not be treated, in respect of the remedy by appeal, as an *ex parte* decree, and therefore, under the ruling in *Lal Singh v. Kunjun* (1. L. R., 4 All. 387) not appealable, but that an appeal would lie from the decree.—*Chunni Lal v. Chamman Lal*, 1. L. R., 7 All. 159. [Nov. 1, 1884.]

IN a suit brought by two Muhammadan *parda-nashin* ladies for recovery of immoveable property by right of inheritance, an order was passed under s. 129 of the Civil

Procedure Code, requiring the plaintiffs to declare by affidavit "all the papers connected with the point at issue in the cause which were or had been in their possession or control." After some ineffectual proceedings, the plaintiffs were peremptorily ordered to file their affidavit on a certain date. On that date an affidavit was filed on their behalf by their brother and nephew, with a list of their documentary evidence; but the affidavit and list was considered defective upon several grounds, one of which was that it ought to have been made by the plaintiffs personally. Further time was then given to the plaintiffs to amend these defects, and ultimately they filed an affidavit purporting to be made by them personally, praying that the Court would have it verified in any manner thought proper, provided that their *parda-nashini* were not interfered with. The Court, under s. 136 of the Code, dismissed the suit for want of prosecution, in consequence of the orders under s. 129 not having been complied with, though ample opportunity had been given to the plaintiffs and no sufficient ground for non-compliance had been shown. *Held*, without going into the question of the sufficiency or non-sufficiency of the action of the plaintiffs with regard to the orders made under s. 129 of the Code, that, looking at the disabilities of the plaintiffs and the circumstances of their suit, the case was not one in which it was expedient to enforce the liability to which they might have exposed themselves under the peculiar provisions of s. 136.—*Kaliau Bibi v. Safdar Husain Khan*, I. L. R., 8 All. 265. [April 2, 1886.]

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137. The Court may of its own accord, and may in its discretion upon the application of any of the parties to a suit, Court may send for papers from its own records or send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

Every application made under this section shall (unless the Court otherwise directs) be supported by an affidavit of the applicant or his pleader, showing how the record is material to the suit in which the application is made, and that the applicant cannot, without unreasonable delay or expense, obtain a duly authenticated copy of the record, or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

Nothing contained in this section shall be deemed to enable the Court to use in evidence any document which, under the Indian Evidence Act, 1872, would be inadmissible in the suit.

WHERE a specific title has been alleged, but not proved, and the plaintiff endeavours to succeed in the first Court or second Court of Appeal upon title by twelve years' adverse possession, he must be prepared to show that this other title by twelve years' adverse possession was raised in the Court of first instance, with sufficient clearness to enable his adversary to understand that he claimed to succeed as well by twelve years' adverse possession as by the specific title alleged. In all cases in which parties apply for a summons to compel the attendance of witnesses, or a summons to produce documents, or apply to have a document sent for under s. 137 of the Code of Civil Procedure, the Court ought not to refuse such application, merely because, in its opinion, the witnesses cannot be present, or the documents cannot be produced, before the termination of the trial.—*Krishna Churn Baisack v. Protap Chunder Surma*, I. L. R., 7 Cal. 560. [July 4, 1881.]

Ditto.

138. The parties or their pleaders shall bring with them, and have in readiness at the first hearing of the suit, to be produced when called for by the Court, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court at any time before such hearing has ordered to be produced.

CERTAIN documents having been allowed by the District Munsif to be filed by the plaintiff during the trial of a suit, the District Judge, on appeal, held that he was bound to strike them off the file on the ground that they were not filed with the plaint nor entered in any list annexed to the plaint, and because the Munsif had not recorded any reason for admitting them. *Held* that, as the documents had been admitted in evidence by the Lower Court, the Appellate Court was bound to consider them.—*Minakshi v. Velu*, I. L. R. 6 Mad. 373. [Mar. 2, 1885.]

139. No documentary evidence in the possession or power of any party, *Extending to*
Effect of non-production of which should have been, but has not been, pro- *Provincial S.*
documents. duced in accordance with the requirements of s. *C. Courts.*

138. shall be received at any subsequent stage of the proceedings, unless good cause be shown to the satisfaction of the Court for the non-production thereof. And the Judge receiving any such evidence shall record his reasons for so doing.

CERTAIN documents having been allowed by the District Munsif to be filed by the plaintiff during the trial of a suit, the District Judge, on appeal, held that he was bound to strike them off the file on the ground that they were not filed with the plaint nor entered in any list annexed to the plaint, and because the Munsif had not recorded any reason for admitting them. *Held* that, as the documents had been admitted in evidence by the Lower Court, the Appellate Court was bound to consider them.—*Minakshi v. Velu*, I. L. B., 8 Mad. 373. [Mar. 9, 1885.]

140. The Court shall receive the documents respectively produced by the parties at the first hearing, provided that the documents produced by each party be accompanied by an accurate list thereof prepared in such form as the High Court may, from time to time, direct.

Ditto.

The Court may, at any stage of the suit, reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Rejection of irrelevant or inadmissible documents.

141. No document shall be placed on the record unless it has been proved or admitted in accordance with the law of evidence for the time being in force. Every document so proved or admitted shall be endorsed with the number and title of the suit, the name of the person producing it, and the date on which it was produced. The Judge shall then endorse with his own hand a statement that it was proved against, or admitted by (as the case may be), the person against whom it is used. The document shall then be filed as part of the record :

Ditto.

Provided that, if the document be an entry in a shop-book or other book, the party on whose behalf such book is produced may furnish a copy of the entry, which may be endorsed as aforesaid, and shall be filed as part of the record, and the Court shall mark the entry, and shall then return the book to the person producing it.

Entries in shop-books.

All documents produced at the first hearing, and not so proved or admitted, shall be returned to the parties respectively producing them.

142. When a document so proved or admitted is relied on as evidence by either party, but the Court considers it inadmissible, it shall be further endorsed with the addition of the word "rejected," and the endorsement shall be signed by the Judge.

Ditto.

and returned.

The document shall then be returned to the party who produced it.

143. Notwithstanding anything contained in ss. 62, 141, and 142, the Court may order any document to be impounded. Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

Ditto.

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144. In suits in which an appeal is not allowed, when the suit has been disposed of, and in suits in which an appeal is allowed, when the time for preferring an appeal from the decree has elapsed, or, if an appeal has been preferred, then, after the appeal has been disposed of, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit, and placed on the record, shall, unless the document is impounded under s. 143, be entitled to receive back the same:

Provided that a document may be returned at any time before either of such events, if the person applying for such return delivers to the proper officer a certified copy of such document to be substituted for the original:

Certain documents not to be returned.

Provided also that no document shall be returned which, by force of the decree, has become void or useless.

On the return of a document which has been admitted in evidence, a receipt to be given for returned document. — receipt shall be given by the party receiving it, in a receipt-book to be kept for the purpose.

Ditto.

Provisions as to documents applied to material objects.

145. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

CHAPTER XI.

OF THE SETTLEMENT OF ISSUES.

Ditto.

Framing of issues.

146. Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue.

Each material proposition affirmed by one party and denied by the other must form the subject of a distinct issue.

Issues are of two kinds: (a) issues of fact; (b) issues of law.

At the first hearing of the suit, the Court shall, after reading the plaint and the written statements (if any), and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to the Court to depend.

When issues both of law and of fact arise in the same suit, and the Court is of opinion that the case may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Nothing in this section requires the Court to frame and record issues when the defendant at the first hearing of the suit makes no defence.

Ditto.

Allegations from which issues may be framed.

147. The Court may frame the issue from all or any of the following materials—

(1) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties or persons;

- (b) allegations made in the plaint or in the written statements (if any), tendered in the suit, or in answer to interrogatories delivered in the suit ;
 (c) the contents of documents produced by either party.

A COURT, in framing issues, is not bound down to the language of the plaint and written statement ; but may frame them, not only from the pleadings, but also from the statements of the parties and their pleaders made before the Court.—*Mahomed Mahmood v. Safar Ali*, I. L. R., 11 Cal. 407. [Mar. 30, 1885.]

148. If the Court be of opinion that the issues cannot be correctly framed without the examination of some person, the Court may examine witnesses or documents before framing issues, or not before the Court, or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, to be fixed by the Court, and may (subject to the rules contained in the Indian Evidence Act) compel the attendance of any person or the production of any document by the person in whose hands it may be, by summons or other process.

149. The Court may, at any time before passing a decree, amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the controversy between the parties shall be so made or framed.

The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

A JUDGE is not bound to make any amendment in the issues of a case, except for the purpose of more effectually putting in issue and trying the real question or questions in controversy as disclosed by the pleadings on either side. *Rizjie Beebe v. Manohar Doss* (2 Ind. Jur., N. S., 118), *Wilkin v. Reed* (15 C. B. 192), *Lucas v. Tattleton* (3 H. and N. 116), followed. Where no injustice would be done to either party, the Courts, in the exercise of their discretion, under special circumstances, may allow issues to be raised upon matter which does not strictly come within the proper scope of the pleadings. The power to allow such amendments is given by the first part of s. 149 of Act X. of 1877, corresponding with the first part of s. 141 of Act VIII. of 1859.—*Nehu Roy v. Radha Pershad Singh*, I. L. R., 5 Cal. 64. [Mar. 31, 1879.]

150. When the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing—

(a) that upon the finding of the Court in the affirmative or the negative of such issue, a sum of money specified in the agreement, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement,

(b) that upon such finding some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct, or

(c) that upon such finding one or more of the parties shall do or abstain from doing some particular act, specified in the agreement, and relating to the matter in dispute.

Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

151. If the Court be satisfied, after making such inquiry as it deems proper,

(a) that the agreement was duly executed by the parties,

(b) that they have a substantial interest in the decision of such question as aforesaid, and

(c) that the same is fit to be tried and decided, it may proceed to record and try the issue, and state its finding or opinion thereon in the same manner as if the issue had been framed by the Court;

and may, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement;

and upon the judgment so given, decree shall follow, and may be executed in the same way as if the judgment had been pronounced in a contested suit.

CHAPTER XII.

DISPOSAL OF THE SUIT AT THE FIRST HEARING.

152. If, at the first hearing of a suit, it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

153. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or fact, the Court may at once pronounce judgment for or against such defendant, and the suit shall proceed only against the other defendants.

154. When the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court be satisfied that no further argument or evidence than the parties can at once supply is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues;

and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present, and none of them object.

If the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument, as the case requires.

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If either party fails to produce his evidence, Court may pronounce judgment, or adjourn suit.

155. If the summons has been issued for the final disposal of the suit, and either party fails, without sufficient cause, to produce the evidence on which he relies, the Court may at once pronounce judgment,

or may, if it thinks fit, after framing and recording issues under section 146, adjourn the suit for the production of such evidence as may be necessary to its decision upon such issues.

CHAPTER XIII.

OF ADJOURNMENTS.

156. The Court may, if sufficient cause be shown, at any stage of the Court may grant time, and adjourn hearing. suit, grant time to the parties or to any of them, and may, from time to time, adjourn the hearing of the suit. Extending to Provincial S. C. Courts.

In all such cases the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Costs of adjournment:

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing to be necessary for reasons to be recorded by the Judge with his own hand.

A COURT ought not to adjourn a case for the production of a document, much less (when it does so) to allow witnesses and several of the parties who were interested in the result, and who had been previously examined, to be recalled and to add to and vary the evidence which they had previously given, in order to prove a case which they had not set up.—*Hurpurshad and others v. Sheo Dyal and others*, (P. C.) 3 P. C. R. 304; 26 W. R. 55; L. R. 3 I. A. 259. [May 30, 1876.]

157. If, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Chapter VII., or make such other order as it thinks fit. Ditto.

THE first hearing of a suit was fixed for the 12th December 1883, on which day the defendant did not appear, and the case was adjourned to the 18th December, and, as the defendant did not then appear, a decree was passed in favour of the plaintiff. A *vakalat-nama* had been previously filed on the defendant's part, and he had also objected to an application filed by the plaintiff for attachment of the defendant's property before judgment. *Held* that these acts on the defendant's part did not constitute an "appearance" by him within the meaning of s. 100 of the Civil Procedure Code, which referred to an appearance in answer to a summons to appear and answer the claim on a day specified, issued under s. 64; that the decree was therefore *ex parte* within the meaning of ss. 100 and 108, and an appeal consequently lay to the High Court under s. 583, cl. 9, from an order rejecting an application to set the decree aside. *Zain-ul-ab-din Khan v. Ahmad Raza Khan* (I. L. R., 2 All. 67; L. R., 5 Ind. Ap. 233) distinguished; *Administrator-General of Bengal v. Dyaram Das* (6 B. L. R. 688), *Bhimacharya v. Fakirappa* (4 Bom. H. C. R. 206), and *Bibee Haloo v. Atwaro* (7 W. R. 81), referred to. *Per* Mahmood, J.—That the Court on the 18th December seemed to have acted under s. 157 of the Civil Procedure Code, and, choosing the first of the alternative courses allowed by that section, acted under Chapter VII. of the Code, and passed an *ex-parte* decree under the provisions of s. 100 of the chapter.—*Hira Dai v. Hira Lal*, I. L. R., 7 All. 538. [Jan. 29, 1885.]

A MUNSIF, before whom a suit was pending, fixed, by way of adjournment a particular date for its disposal. Upon the date so fixed it was necessary to take evidence upon issues of fact which had previously been settled. The plaintiffs appeared on that day. The defendants did not appear, but there was in Court a pleader who had been instructed by the two principal defendants at the outset, and who had filed his *vakalatnama*. There was nothing to show that he had ever received any other instructions whatever, either as to the facts of the case or the conduct of the defence, or that the defendants had done anything beyond giving the pleader the instructions above referred to. Under these circumstances, the plaintiffs gave their evidence, and the Munsif decreed the claim. *Held* that, under the circumstances stated, the defendants' pleader must be taken not to have been in Court on the date fixed for the purpose of defending the suit on behalf of the defendants, inasmuch as, upon that part of the case, he had not been instructed; that it was therefore a fair inference that the defendants did not appear, and the case was disposed of under

124. SUMMONING & ATTENDANCE OF WITNESSES. [Ss. 158-160.]

s. 157 of the Civil Procedure Code; and that, under these circumstances, the provisions of s. 108 were applicable, and the decree was an *ex-parte* decision which it was open to the Munsif to re-consider. *Hira Dai v. Hira Lal* (I. L. R., 7 All. 538) followed.—*Ramtahal Ram v. Rameshwar Ram*, I. L. R., 8 All. 140. [Jan. 9, 1886.]

Extending to
Provincial S.
C. Courts.

158. If any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.

THE Code of Civil Procedure does not authorize the dismissal of a suit on refusal or failure of a party to deposit the amount ordered by the Court as remuneration to a Commissioner appointed under s. 394 to examine accounts. The remuneration of a Commissioner appointed by the Court to examine accounts should, as a rule, be a definite amount, and not at a monthly allowance.—*Ragava Chariar v. Vedanta Chariar*, I. L. R., 3 Mad. 259. [Aug. 22, 1881.]

WHERE a suit was adjourned on the application of the defendant, and on the day to which the case was adjourned the plaintiff was absent, and the suit was dismissed for default by an order purporting to be passed under s. 158 of the Code of Civil Procedure, 1882, held that s. 158 was not applicable to the circumstances, and that the plaintiff was entitled to apply under s. 103 to have the dismissal set aside.—*Ramaya v. Rangaya*, I. L. R., 7 Mad. 41. [July 31, 1883.]

CHAPTER XIV.

OF THE SUMMONING AND ATTENDANCE OF WITNESSES.

Ditto.

159. The parties may, after the summons has been delivered for service on the defendant, whether it be for the settlement of issues only, or for the final disposal of the suit, obtain, on application to the Court or to such officer as it appoints in this behalf, before the day fixed for such settlement or disposal, as the case may be, summonses to persons whose attendance is required either to give evidence or to produce documents.

THE 20th of March 1877 having been fixed for the final hearing of a suit, the plaintiff on the 17th of March, and defendant on the 19th, filed their lists of witnesses to be summoned. Both lists were ordered merely to be put up with the record. When the suit came on for hearing, it was dismissed on the ground that, when the plaintiff filed his list, there was not sufficient time left to summon the witnesses. Held that the Judge was not justified in dismissing the suit on this ground, unless he found that it would have been absolutely impossible to secure the attendance of the witnesses, had the summonses been granted on the 17th instant. S. 149 of Act VIII. of 1859, and s. 159 of Act X. of 1877, discussed.—*Rajendro Narain Neogi v. Raja Kumud Narain Bhup*, 3 C. L. R. 569. [July 31, 1878.]

UNDER s. 159 of the Code of Civil Procedure (Act XIV. of 1882), parties are entitled to summonses for their witnesses at any time before the final hearing; but if there has been delay and want of diligence in consequence of which witnesses, not having been served in good time, are not present, the Court may properly refuse to adjourn the hearing.—*Kaji Ahmed v. Haji Mahamad*, I. L. R., 9 Bom. 308. [Feb. 19, 1884.]

Ditto.

160. The party applying for a summons shall, before the summons is granted, and within a period to be fixed by the Court, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned, in passing to and from the Court in which he is required to attend, and for one day's attendance.

If the Court be subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to the rules (if any) laid down by competent authority.

Scale of expenses.

161. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally. Extending to Provincial S. C. Courts.

162. If it appear to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses, the Court may order such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence, or may both order such levy and discharge such person as aforesaid.

Ditto.

If it be necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of the party at whose instance he was summoned; or the Court may discharge the person summoned without requiring him to give evidence, or may both order such levy and discharge such person as aforesaid.

163. Every summons for the attendance of a person to give evidence or produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the person summoned is called on to produce shall be described in the summons with reasonable accuracy.

Ditto.

164. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons, if he cause such document to be produced instead of attending personally to produce the same.

Ditto.

165. Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his actual possession or power.

Ditto.

166. Every summons to a person to give evidence or produce a document shall be served as nearly as may be in manner hereinbefore prescribed for the service of summons on the defendant; and the rules contained in Chapter VI. as to proof of service shall apply in the case of all summonses served under this section.

Ditto.

167. The service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

Ditto.

126 SUMMONING & ATTENDANCE OF WITNESSES. [Ss. 168-171.]

UNDER s. 159 of the Code of Civil Procedure (Act XIV. of 1882), parties are entitled to summons for their witnesses at any time before the final hearing; but if there has been delay and want of diligence in consequence of which witnesses, not having been served in good time, are not present, the Court may properly refuse to adjourn the hearing.—*Káji Ahmed v. Háji Mahamad*, I. L. R., 9 Bom. 308. [Feb. 19, 1894.]

Extending to
Provincial S.
Courts.

168. If the serving-officer certify to the Court that the summons for the attendance of a person, either to give evidence or to produce a document, cannot be served, the Court shall examine the serving-officer on oath touching the non-service;

and upon being satisfied that such evidence or production is material, and that the person for whose attendance the summons has been issued is absconding or keeping out of the way for the purpose of avoiding the service of the summons, may issue a proclamation requiring him to attend to give evidence, or produce the document, at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door of the house in which he ordinarily resides.

If he does not attend at the time and place named in such proclamation, the Court may, in its discretion, at the instance of the party on whose application the summons was issued, make an order for the attachment of the property of the person whose attendance is required, to such amount as the Court thinks fit, not exceeding the amount of the costs of attachment and of the fine which may be imposed under section 170:

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property.

Ditto.

169. If, on the attachment of his property, such person appears, and satisfies the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

Ditto.

170. If such person does not appear, or, appearing, fails to satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court may impose upon him such fine, not exceeding five hundred rupees, as the Court thinks fit, having regard to his condition in life and all the circumstances of the case, and may order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of the said fine (if any):

Provided that, if the person whose attendance is required pays into Court the costs and fine as aforesaid, the Court shall order the property to be released from attachment.

Ditto.

171. Subject to the rules of this Code as to attendance and appearance, and to the provisions of the Indian Evidence Act, 1872, if the Court at any time thinks it necessary to examine any person other than a party to the suit, and not named as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness, or require him to produce such document.

172. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit must attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document must either attend to produce it, or cause it to be produced, at such time and place.

Extending to Provincial S. C. Courts.

173. No person so summoned and attending shall depart unless and until (a) he has been examined or has produced the document and the Court has risen, or (b) he has obtained the Court's leave to depart.

Ditto.

174. If any person on whom a summons to give evidence or produce a document has been served fails to comply with the summons, or if any person so summoned and attending departs in contravention of s. 173, the Court may order him to be arrested and brought before the Court :

Ditto.

Provided that no such order shall be made when the Court has reason to believe that the person so failing had a lawful excuse for such failure.

When any person so brought before the Court fails to satisfy it that he had a lawful excuse for not complying with the summons, the Court may sentence him to fine not exceeding five hundred rupees.

Explanation.—Non-payment or non-tender of a sum sufficient to defray the expenses mentioned in s. 160 shall be deemed a lawful excuse within the meaning of this section.

If any person so apprehended and brought before the Court cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him

175. If any person so failing to comply with a summons absconds or keeps out of the way, so that he cannot be apprehended and brought before the Court, the provisions of sections 168, 169, and 170, shall, *mutatis mutandis*, apply.

Ditto.

176. No one shall be bound to attend in person to give evidence or to be examined in Court unless he resides—

Ditto.

(a) within the local limits of its ordinary original jurisdiction, or
(b) without such limits and at a place less than fifty or (where there is railway-communication for five-sixths of the distance between the place where he resides and the place where the Court is situated) two hundred miles distant from the Court-house.

177. If any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his actual possession or power, the Court may, in its discretion, either pass a decree against him, or make such order in relation to the suit as the Court thinks fit.

Ditto.

HELD that the District Judge of Thána had jurisdiction to grant probate of a will executed on 28th October 1881 by a Hindu woman in the town of Bombay devising immovable property situated in Thána. Where the caveator refuses to answer a question,

s. 177 of the Code of Civil Procedure (Act XIV. of 1882), the provisions of which are extended to proceedings before the District Judge by s. 83 of Act V. of 1881, will not justify the Judge in dispensing with the proof of the will set up, and passing a decree in favour of the petitioner. The Court of Appeal will reverse such a decree if passed.—*Rāvji Ranchod Naik v. Vishnu Ranchod Naik*, I. L. R., 9 Bom. 241. [Dec. 1884.]

Extending to
Provincial S.
Courts.

178. Whenever any party to the suit is required to give evidence or to produce a document, the rules as to witnesses contained in this Code shall apply to him so far as they are applicable.

Rules as to witnesses to apply to parties summoned.

CHAPTER XV.

OF THE HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

Ditto.

179. On the day fixed for the hearing of the suit, or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

Statement and production of evidence by party having right to begin.

Explanation.—The plaintiff has a right to begin, unless where the defendant admits the facts alleged by the plaintiff, and contends that, either in point of law or on some additional facts alleged by the defendant, the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

Rules as to right to begin.

In a suit for partition of certain property and trading business, the defendants resisted the suit, admitted a nucleus of joint property, and claimed the right to begin on the ground that the *oys* was on them to prove that the whole property and the trading business were not joint. *Held* that, unless the defendants admitted all the allegations, or all the material allegations, the plaintiff was entitled to begin.—*Aghore Nauth Neoghy v. Prem Chand Neoghy*, 7 C. L. R. 274. Aug. 25, 1880.

It cannot be laid down as a general proposition controlling the provisions of s. 179 of the Code of Civil Procedure, that in a suit for mesne-profits against persons who have been in possession of the land in respect of which the mesne-profits are claimed, and who have been shown to have no title, that the burden of proof is upon the defendants. In a suit for mesne-profit against a number of defendants who have been in possession of distinct portions of a newly-formed chur, and are proved to have no title thereto, it is competent, having regard to the provisions of the Civil Procedure Code, for the Court to apportion the damages payable by the defendants severally in respect of the portions held by them respectively. *Aliter*, where the defendants have jointly taken possession of a particular portion of such land. *Per Curiam*.—The reason for treating as joint tort-factors all persons who have occupied portions of land ultimately found to belong to a neighbouring estate, and for applying the rule of contribution or apportionment between joint tort-factors, is wanting in the case of a suit for mesne-profits against a number of defendants who have taken possession of distinct portions of lands forming part of a newly-formed chur to which they have no title, and it is fair and equitable that the defendants should be severally made liable for mesne-profits in respect of the parcels occupied by them respectively.—*Krishna Mohun Basak v. Kunjo Behari Basak*, 9 C. L. R. 1. [Feb. 10, 1881.]

Ditto.

Statement and production of evidence by other party.

180. The other party shall then state his case and produce his evidence (if any).

Reply by party beginning.

The party beginning is then entitled to reply.

Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues, or reserve it by way of answer to the evidence produced by the other party. In the latter case, the party beginning may

produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

181. The evidence of the witnesses in attendance shall be taken orally Extending to
Witnesses to be examined in open Court in the presence, and under the per- Provincial S.
in open Court. sonal direction and superintendence, of the Judge. C. Courts.

182. In cases in which an appeal is allowed, the evidence of each witness shall be taken down in writing in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and also in the presence of the parties or their pleaders, and the Judge shall, if necessary, correct the same, and shall sign it.

FAILURE to comply with the provisions of ss. 182 and 183 of Act X. of 1877 (Civil Procedure Code) in a judicial proceeding is an informality which renders the deposition of an accused inadmissible in evidence on a charge of giving false evidence based on such deposition; and under s. 91 of Act I. of 1872 (Indian Evidence Act), no other evidence of such deposition is admissible.—In the Matter of the Petition of Mayadeb Gossami; *Empress v. Mayadeb Gossami*, I. L. R., 6 Cal. 762. [Feb. 22, 1881.]

183. If the evidence is taken down under section 182 in a language different from that in which it was given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it was given.

184. In cases in which the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

185. Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down with his own hand.

186. The Court may, of its own motion, or on the application of any party or his pleader, take down, or cause to be taken down, any particular question and answer, or any objection to any question, if there appear any special reason for so doing.

187. If any question put to a witness be objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection, and the name of the person making it, together with the decision of the Court thereon.

188. The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

Extending to
Provincial S.
C. Courts.

189. In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

Ditto.

190. If the Judge be rendered unable to make a memorandum as above required by this chapter, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court.

Every memorandum so made shall form part of the record.

*Ditto.

191. Where the Judge taking down any evidence, or causing any memorandum to be made under this chapter, dies or is removed from the Court before the conclusion of the suit, his successor may, if he thinks fit, deal with such evidence or memorandum as if he himself had taken it down or caused it to be made.

A Subordinate Judge, having taken all the evidence in a suit before him, and having completed the hearing of the suit, except for the arguments of counsel on both sides, was removed, and the case came on for hearing before his successor. The new Subordinate Judge took up the case from the point at which it had been left by his predecessor, and proceeded to judgment and decree. *Held* that the only power given by the Civil Procedure Code in such cases is to allow the evidence taken at the first trial to be used as evidence at the second trial, and not to allow the two hearings to be linked together and virtually made one; that the Subordinate Judge should have fixed a day for the entire hearing of the suit before himself, and should first have heard the opening statement on behalf of the plaintiff, the evidence produced by both sides, and the arguments on behalf of both, and then finally decided the case which he had himself heard and tried; that he might, in accordance with the provisions of s. 191 of the Civil Procedure Code, have allowed the depositions which had been taken before his predecessor to be put in; and that, in neglecting to take this course, and in deciding the case upon materials which were never before him, his action was illegal, and the judgment and decree were nullities.—*Jagann Das v. Narain Lal*, I. L. R., 7 All. 557. [June 24, 1885.]

A SUBORDINATE Judge, having taken all the evidence in a suit before him, adjourned the case to a future date for disposal. Upon the date fixed a further adjournment was made. The Subordinate Judge, at this stage of the proceedings, was removed, and a new Subordinate Judge was appointed. *Held* that the trial, so far as it had gone before the first Subordinate Judge, was abortive, and, as a trial, became a nullity. *Held* also that the duty of the second Subordinate Judge, when the case was called on before him, was to fix a date for the entire hearing and trial of the case before himself; that he might, at the request of the pleaders, have fixed the same day upon which the case was called on, and proceeded to try it at once; and that the trial should then have proceeded in the ordinary way, except that the parties would be allowed, under s. 191 of the Civil Procedure Code, to prove their allegations in a different manner. *Jagann Das v. Narain Lal* (I. L. R., 7 All. 557) referred to.—*Afzal-un-nissa Begum v. Al Ali*, I. L. R., 8 All. 35. [Nov. 27, 1885.]

The trial of a suit before a Subordinate Judge was completed except for argument and judgment, and a date was fixed for hearing argument. At this point a new Subordinate Judge was appointed, and he passed an order directing a further adjournment and fixing a particular date for disposal of the case. After some further adjournments, the Subordinate Judge delivered judgment, having heard argument on both sides upon the evidence taken by his predecessor. The District Judge having on appeal upheld the Subordinate Judge's decision, a second appeal was preferred to the High Court, and an objection was raised on the appellant's behalf that the proceedings taken before the Subordinate Judge were void, and he could not be said to have tried the case, inasmuch as no evidence was taken before him, and his judgment was based solely on evidence recorded by his predecessor. No objection of this kind was taken in either of the Courts below. *Held* by the Full Bench that, with reference to the grounds of appeal, and under the

circumstances of the case, the officer who passed the decree in the Court of first instance had jurisdiction to deal with and determine the suit in the mode in which he did. *Jagaram Das v. Narain Lal* (I. L. R., 7 All. 857) and *Afzal-un-nissa Begam v. Al Ali* (I. L. R., 8 All. 35) discussed. *Per* Straight, Offg. C.J., that, as no objection was raised before the Subordinate Judge to his taking up and dealing with the case in the mode in which he did, but the evidence was discussed and criticized on both sides, there had been a waiver on the part of the appellant in reference to the action of the Subordinate Judge of which he now sought to complain. *Per* Oldfield, J., that where a Judge takes up a trial begun by another, although the law permits him to deal with the evidence taken by his predecessor as if he himself had taken it down, he must deal with it judicially, and try the cause as though it had come before him in the first instance, and there must be a hearing of the entire case before himself; and in every case it has to be seen whether as a matter of fact, there has been a real trial and hearing of the entire case by the Judge, and if the evidence previously taken was not judicially dealt with, counsel heard upon it, and the entire case fully heard and tried, there has been no trial in the legal sense of the work, and the proceedings must be set aside. *Jagaram Das v. Narain Lal* (I. L. R., 7 All. 857), and *Afzal-un-nissa Begam v. Al Ali* (I. L. R., 8 All. 35) followed. *Per* Mahmood, J., that, although it is true that "a trial must be one, and must be held before one Court only," the identity of the Court is not altered by a new Judge being appointed to preside in such Court; that when a trial goes on for more than one day, each day constitutes a separate hearing, and that such hearings cannot be treated as a trial heard on the original date; that the Civil Procedure Code does authorize a Judge to take up a case which has been partly heard before his predecessor, and to continue it from the point at which his predecessor left off; that where the Judge who has partly heard a case dies or is removed, the trial, so far as it has gone before him, is neither abortive nor becomes a nullity; that the new Judge is not required to fix a day for the entire hearing of the suit before himself, nor is there anything to prevent him from taking up a trial which has been partly heard by his predecessor, and to proceed with it as if it had been commenced before himself; that the Code does not recognise such procedure as amounting to separate trial; that the Judge who succeeds another, after a trial which partly proceeded before his predecessor, is not bound to fix a new day for commencing the trial *de novo*, nor should the trial proceed before the new Judge as if the day were the first on which the case had ever come on for hearing; that the evidence recorded by the preceding Judge, by the mere fact of being upon the record, is *ipso facto* evidence in the cause, and could, under s. 191 of the Code, be treated by the succeeding Judge "as if he himself had taken it down or caused it to be made;" that when the case comes on for hearing before the new Judge, there is no necessity for putting in the depositions of witnesses which, though taken by his predecessor, are already upon the record; that such depositions must be dealt with as materials of evidence before the new Judge; that a judgment and decree upon such evidence are neither illegal nor absolute nullities, there being no want of jurisdiction; that when such judgment and decree are passed, the Court of first appeal is prohibited by s. 564 of the Code to order a trial *de novo*, but is bound by s. 565 of the Code to decide the appeal upon the evidence on the record; that where further issues are directed to be tried, or additional evidence is to be taken, the Court of appeal is bound to act according to the provisions of ss. 566, 568, and 569 of the Code, but cannot order a new trial; that even when there has been an irregularity on the part of the first Court in receiving or rejecting evidence, the provisions of s. 578 of the Civil Procedure Code and s. 167 of the Evidence Act prohibit the reversal of a decree and the remand of a case for new trial, unless the irregularity affects the merits of the case or the jurisdiction of the Court. *Jagaram Das v. Narain Lal* (I. L. R., 7 All. 857) and *Afzal-un-nissa Begam v. Al Ali* (I. L. R., 8 All. 35) dissented from. *Per* Tyrrell, J., that, in reference to the Full Bench, the only matters which can legally be attended to are the cases referred, and it is not competent for the Full Bench to review or pronounce judicial opinions upon the Court's judgment in cases which have been finally decided and not made the subject of reference. *Jagaram Das v. Narain Lal* (I. L. R., 7 All. 857) and *Afzal-un-nissa Begam v. Al Ali* (I. L. R., 8 All. 35) followed and explained.—*Jadvi Rai v. Kanizak Husain*, I. L. R., 8 All. 576. [Aug. 2, 1886.]

192. If a witness be about to leave the jurisdiction of the Court, or if

Extending to
Provincial S.
C. Courts.

Power to examine witness other sufficient cause be shown to the satisfaction immediately.

of the Court why his evidence should be taken immediately; the Court may, upon the application of either party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and may then be read at any hearing of the suit.

Extending to
Provincial S.
C. Courts.

193. The Court may, at any stage of the suit, recall any witness who has been examined, and who has not departed in accordance with section 173, and may (subject to the provisions of the Indian Evidence Act, 1872) put such questions to him as the Court thinks fit.

CHAPTER XVI.

OF AFFIDAVITS.

Ditto.

194. Any Court of first instance and any Appellate Court may, at any time, for sufficient reason, order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable :

Provided that where it appears to the Court that either party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

Ditto.

195. Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the declarant for cross-examination.

Such attendance shall be in Court, unless the declarant is exempted under this Code from personal appearance in Court, or the Court otherwise directs.

Ditto.

196. Affidavits shall be confined to such facts as the declarant is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted, provided that reasonable grounds thereof be set forth.

The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party producing the same.

Ditto.

Oath of declarant by whom to be administered.

197. In the case of any affidavit under this Code—

- (a) any Court or Magistrate, or
- (b) any officer whom a High Court may appoint in this behalf, or
- (c) any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf, may administer the oath of the declarant.

CHAPTER XVII.

OF JUDGMENT AND DECREE.

198. The Court, after the evidence has been duly taken, and the parties have been heard either in person or by their respective pleaders or recognized agents, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

Extending to
Provincial S.
C. Courts.

199. A Judge may pronounce a judgment written by his predecessor, but not pronounced.

Ditto.

200. The judgment shall be written in the language of the Court, or in English, or in the Judge's mother-tongue.

Ditto.

201. Whenever the judgment is written in any language other than that of the Court, the judgment shall, if any of the parties so require, be translated into the language of the Court, and the translation shall also be signed by the Judge or such officer as he appoints in this behalf.

Ditto.

202. The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it, and shall not be altered or added to, save to correct verbal errors, or to supply some accidental defect not affecting a material part of the case, or on review.

Ditto.

203. The judgments of the Courts of Small Causes need not contain more than the points for determination and the decision thereupon.

Ditto.

The judgments of all other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

204. In suits in which issues have been framed, the Court shall state its finding on decision, with the reasons thereof upon each separate issue, unless the finding upon any one or more of the issues be sufficient for the decision of the suit.

In order to see whether a question is *res judicata* within the meaning of s. 13, Civil Procedure Code, the former decree and the questions decided thereby must alone be considered. The words in s. 13, "has been heard and finally decided by such Court," do not apply to an opinion expressed in the judgment on other issues not material for the purpose of the decree, though properly determined under s. 204 by the Court of first instance. *Niamut Khan Buldia v. Phadu Buldia* (I. L. R., 6 Cal. 319) and *Lachman Singh v. Mohan* (I. L. R., 2 All 497) dissented from. Where a plaintiff improperly brings a defendant before a Court, and the suit is dismissed, the defendant should not be deprived of costs merely because the Court considers the defence a fabrication to meet the plaintiff's claim.—*Devarakonda Narasamma v. Devarakonda Kanaya*, I. L. R., 4 Mad. 134. [Sep. 5, 1881.]

In a suit for ejectment by a landlord against his tenant the following amongst other issues were raised, viz., whether the notice alleged was sufficient, and whether the defendant was entitled to a right of occupancy. The Court of first instance dismissed the suit, finding upon the admitted facts that the notice alleged was insufficient, but also decided the other issues raised, and held that the defendant was not entitled to a right of occupancy. Held that the finding upon the question of notice based upon the admitted facts being sufficient to dispose of the whole case, the Court erred in proceeding to determine any other issues raised in the suit.—*Barhundeo Narain Singh v. Mackenzie*, I. L. R., 10 Cal. 1005. [Sep. 1, 1884.]

Extending to
Provincial S.
C. Courts.

205. The decree shall bear date the day on which the judgment was pronounced; and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

WHERE a suitor is unable to obtain a copy of a decree from which he desires to appeal, by reason of the decree being unsigned, he is entitled under s. 12 of the Limitation Act to deduct the time between the delivery of the judgment and that of the signing of the decree in computing the time taken in presenting his appeal.—*Bani Madhub Mitter v. Matungini Dassi*; *Kali Shunker Dass v. Gopal Chuander Dutt*, I. L. R., 13 Cal. 104. [May 5, 1886.]

Ditto.

206. The decree must agree with the judgment: it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, as stated in the register, and shall specify clearly the relief granted or other determination of the suit.

Contents of decrees.

The decree shall also state the amount of costs incurred in the suit, and by what parties, and in what proportions, such costs are to be paid.

If the decree is found to be at variance with the judgment, or if any clerical or arithmetical error be found in the decree, the Court shall, of its own motion, or on that

Power to amend decree.

of any of the parties, amend the decree so as to bring it into conformity with the judgment, or to correct such error: provided that reasonable notice has been given to the parties or their pleaders of the proposed amendment.

THE plaintiff sued on a bond in which real property was hypothecated. In his claim the property hypothecated was detailed, and the property itself was impleaded as a defendant, and he obtained a decree in the following terms: "Decree for plaintiff in favour of his claim, and costs against defendant." Held that the decree was to be regarded as simply for money, and not for enforcement of lien.—*Thamman Singh v. Ganga Ram*, I. L. R., 2 All. 342. [July 8, 1879.]

WHERE the plaintiff by his claim sought for a decree for money and enforcement of lien on the property hypothecated in the bond on which the claim was based, and he obtained a decree for the "claim as brought," without any specification in it as to the relief he sought by charging the property hypothecated, held that such a decree was a decree for money only, and did not enforce the charge on the property. *Muluk Fuzquer Bakhsh v. Manohar Dass* (H. C. R., N. W. P., 1870, p. 29) followed.—*Harsukh v. Magharaj*, I. L. R., 2 All. 345. [July 8, 1879.]

ANY order made upon an application for a review of judgment—except an order absolutely rejecting the application—becomes, if it in any way modifies or alters the original order (although the modification or alteration extends only to the rectification of a clerical mistake), the final order in the case; and the party aggrieved by the original decree is entitled, although the modification or alteration was made in his favour, to treat the order upon review of judgment as the final decree or order in the case; and if it was made by a Court, an appeal from which lies in the Court of a District Judge, he is entitled to prefer his appeal at any time within thirty days from its date. When an application for a review of judgment is made upon several grounds, one of which refers only to the question of adjudication of costs, and the Court to whom the application is made holds all the other grounds to be untenable, but is of opinion that there has been a clerical mistake in that part of its order or judgment which refers to costs, it may reject the application absolutely, and permit the applicant to apply, under s. 206 of the Civil Procedure Code, for a rectification of the clerical mistake; but if it does not do so, but, on the application for a review of judgment, amends the clerical mistake in its original order, the decree drawn up in conformity to his order becomes the final decree, and an appeal will lie against it if brought within the time prescribed for bringing an appeal against any other similar decree.—*Joykishen Mookerjee v. Ataoor Rohoman*, I. L. R., 6 Cal. 22. [June 15, 1880.]

AN application to amend a decree which is found to be at variance with the judgment, in accordance with the provisions of s. 206 of the Civil Procedure Code, is an application of the kind mentioned in art. 178 of sch. 2 of Act XV. of 1877, and, as such, subject to the limitation of three years.—*Gaya Prasad v. Sikri Prasad*, I. L. R., 4 All. 23. [July 8, 1881.]

THE plaintiff in a suit claimed possession of villages said in the plaint to be "detailed below." No details of the villages were given in the plaint itself, but a separate paper containing a list of villages was filed with the plaint. The plaintiff obtained a decree for possession of "all the villages claimed," but there was no indication in the decree what those villages were. *Held* that the Court executing the decree was not justified in reading the contents of the list of villages attached to the plaint into the decree, and awarding the decree-holder possession of the villages named in such list. S. A. No. 310 of 1882, decided 11th August 1882 (not reported), followed. *Debi Charap v. Pirbhu Din Ram* (I. L. R., 3 All. 388) referred to.—*Muhammad Sulaiman v. Mahammad Yar*, I. L. R., 6 All. 80. [Aug. 16, 1883.]

PER Oldfield, J.—When an original decree is amended under s. 206 of the Civil Procedure Code, it, as amended, is the decree in the suit; and an appeal, therefore, lies from it under the provisions of s. 540, when the validity of the amendment can be questioned. The matter of amending a decree under s. 206 does not by itself constitute a "case" within the meaning of s. 622 of the Civil Procedure Code, but forms part of the proceedings in the suit in which the decree is made. *Held*, therefore, *per* Oldfield, J., that, where an original decree, which was appealable, was amended by the Court of first instance, under s. 206 of the Civil Procedure Code, the High Court had no power to revise such amendment under s. 622 of the Code. *PER* Mahomed, J.—An order passed under s. 206 amending a decree is a separate adjudication, and is not merely a part of the original decree, and cannot alter its date, and such an order is not appealable under s. 588 of the Code. Such an order, therefore, can be revised by the High Court under s. 622.—*Raghunath Das v. Raj Kumar*, I. L. R., 7 All. 276. [Dec. 22, 1884.]

A DISTRICT Judge, by an order passed under s. 206 of the Civil Procedure Code, altered a decree passed by his predecessor in the terms, "I dismiss the appeal," to read "I accept the appeal," on the ground that his predecessor had obviously meant to say that he accepted the appeal, and that the decree as it stood failed to give effect to the judgment. *PER* Oldfield, J.—That the order passed by the Judge under s. 206 could not be made the subject of revision by the High Court under s. 622 of the Civil Procedure Code, because there was an appeal from the amended decree, which became the decree in the suit, and superseded the original decree. *PER* Mahomed, J.—That an order passed under s. 206 of the Civil Procedure Code constituted an adjudication separate from that concluded by a decree under the Code passed after the parties had been heard and evidence taken, and that the order in the present case was therefore a separate adjudication, and was not appealable under s. 588. Also that, in saying that by "dismissed," his predecessor meant "decree," the Judge had altered the decree in a manner not warranted by the terms of s. 206, that he had, therefore, exercised his jurisdiction "illegally and with material irregularity," within the meaning of s. 622 of the Code, and that the Court was consequently competent to revise his order. *Raghunath Das v. Raj Kumar* (I. L. R., 7 All. 276) referred to.—*Surta v. Ganga*, P. L. R., 7 All. 411. [Jan. 1, 1885.]

THE judgment in an appeal adjudged interest to be paid for the period prior to the institution of the suit only. The decree contained an order for payment of interest from the date of the suit onwards. *Held* that no variance with the judgment, within the meaning of s. 206 of the Civil Procedure Code, was involved in the additional order contained in the decree. —*Kolai Ram v. Pali Ram*, I. L. R., 7 All. 755. [May 9, 1885.]

WHEN a question of costs is purely in the discretion of the lower Court no appeal will lie, but when a matter of principle is involved an appeal will lie. Where A was sued upon the allegation that he had instigated his co-defendant B to refuse to deliver up a document, for the recovery of which the suit was brought, and where no relief was prayed as against A, but the lower Courts awarded a decree in favour of the plaintiff directing A to pay half the costs of suit, *held* that the question was one of principle, and that a second appeal lay to the High Court against the decree directing A to pay such costs.—*Bunwari Lal v. Chowdhry Drup Nath Sing*, I. L. R., 12 Cal. 179. [Aug. 5, 1885.]

• UNDER s. 206 of the Code of Civil Procedure a Court has power to amend its decree by bringing it into conformity with the judgment after the said decree has been confirmed on appeal.—*Sundara v. Subbanga*, I. L. R., 9 Mad. 354. [Mar. 12, 1886.]

THE Court in a suit upon a bond gave the plaintiff a decree, making a deduction from the amount claimed of a sum covered by a receipt produced by the defendant as evidence of part-payment, and admitted to be genuine by the plaintiff. The decree was for a total amount of Rs. 1,282. Subsequently, on application by the decree-holder, and without giving notice to the judgment-debtor, the Court which passed the decree, purporting to act under s. 206 of the Civil Procedure Code, altered the decree, and made it for a sum of Rs. 1,460. The decree-holder took out execution, and the judgment-debtor

objected that the decree was for Rs. 1,282, and had been improperly altered. The Court executing the decree disallowed the objection, on the ground that it was not such as could be entertained in the execution-department. *Held* that the decree as it originally stood was in accordance with the judgment, and the Court had no power to alter it as it did, and the proceeding was further irregular, in that no notice was given to the opposite party as required by s. 206 of the Code. *Held* also that when a decree-holder executes his decree, a judgment-debtor is competent to object that the decree is not the decree of the Court fit to be executed, and therefore not capable of execution; and that the judgment-debtor in this case could raise the question whether the decree, which was altered behind his back, was a valid decree, and fit to be executed.—*Abdul Hayat Khan v. Chunia Kuar*, I. L. R., 8 All. 377. [May 21, 1886.]

AN application to execute a decree, passed in April 1880, was made on the 19th February 1884, and rejected on the 26th March 1884, as being beyond time. This order was upheld on appeal in March 1885. While the appeal was pending, the decree-holder, in May 1884, applied to the Court of first instance to amend the decree under s. 206 of the Civil Procedure Code, and in December 1884 the application was granted. In April 1885, an application was made for execution of the amended decree, the decree-holder contending that limitation should be calculated from the date of the amendment, and that art. 178 of the Limitation Act (XV. of 1877) applied to the case. *Held* that No. 179 and not No. 178 was applicable; that the order rejecting the application of the 19th February 1884 became final on being upheld on appeal; that the amendment could not revive the decree or furnish a fresh starting-point of limitation; and that the application was therefore time-barred. *Mungul Pershad v. Grija Kant Lahiri* (I. L. R., 8 Cal. 51; L. R., 8 Ind. Ap. 123), and *Ram Kirpal v. Rup Kuari* (I. L. R., 6 All. 263; L. R., 11 Ind. Ap. 37), referred to. Observations by Mahmood, J., on the amendment of decrees and s. 206 of the Civil Procedure Code.—*Tarsi Ram v. Man Singh*, I. L. R., 8 All. 492. [June 21, 1886.]

IN execution of a decree for partition of immoveable property passed in 1872, a dispute arose as to the execution in reference to a portion of the property, and, in 1881, it was finally decided that the decree was defective in its description of the property, and therefore incapable of execution. In May 1885, on application by the decree-holder, the Court passed an order amending the decree, the amendment having reference to an arithmetical error. The judgment-debtor applied to the High Court for revision of this order, on the grounds that the amendment of the decree was barred by limitation, and that the decree itself being barred by limitation and finally pronounced to be incapable of execution, the Court had acted beyond its jurisdiction in amending it. *Held* that the application for revision must be rejected. *Per* Oldfield, J., that the High Court had no power to entertain the application under s. 622 of the Civil Procedure Code, with reference to the decision of the Privy Council in *Amir Hassan Khan v. Sheo Bakhsh Singh* (I. L. R., 11 Cal. 6), and of the Full Bench in *Badami Kuar v. Dinu Rai* (I. L. R., 8 All. 111); and, further, that upon the facts stated, the Court ought not to interfere. *Per* Mahmood, J., that the Court was not precluded from entertaining the application for revision under s. 622 of the Civil Procedure Code. *Amir Hassan Khan v. Sheo Bakhsh Singh* (I. L. R., 11 Cal. 6), *Badami Kuar v. Dinu Rai* (I. L. R., 8 All. 111), *Baghunath Das v. Raj Kumar* (I. L. R., 7 All. 276), *Sarta v. Gunga* (I. L. R., 7 All. 411), *Magui Ram v. Jiwa Lal* (I. L. R., 7 All. 336), *Har Prasad v. Jafar Ali* (I. L. R., 7 All. 345), referred to. *Bhagwant Singh v. Jageshwar Singh* (Weekly Notes, 1816, p. 57), and *Abu Said Khan v. Hamid-un-nissa* (Weekly Notes, 1886, p. 39), dissented from. The meaning of the term "jurisdiction" used in s. 622 of the Civil Procedure Code must not be confined to the territorial or pecuniary limits of the power of a Court, or to the nature of the class to which the case belongs. It implies, in addition to questions of these kinds, the presence or absence of a positive authority or power conferred by the law upon tribunals in cases which satisfy the other conditions referred to. In framing the section, the Legislature gave to the High Court power to interfere with the action of subordinate tribunals in cases where there is no remedy, either by appeal or otherwise; and where those tribunals have either exceeded or wrongly declined to exercise the authority, the power, and the jurisdiction which the law confers upon them, or, under the pretence of exercising such authority, power, and jurisdiction, have acted against a positive prohibition of the law. *Combe v. Edwards* (L. R., 3 P. D. 103), and *Crepps v. Durden* (1 Smith's L. C., 8 ed. 711), referred to. *Held* also *per* Mahmood, J., that in the present case the Court below had jurisdiction to entertain the application under s. 206 of the Code; that it did so entertain it; and that, in making the amendment, its action could not be regarded as beyond the limits of its legal power and authority, so as to render it open to the objection of the exercise of jurisdiction "illegally or with material irregularity," within the meaning of s. 622. *Lucas v. Stephen* (9 W. R. 801), *Oomanund Roy v. Maharajah Suttiah Chunder Roy*

(9 W. R. 471), *Zahoor Hossain v. Syedun* (11 W. R. 142), and *Goluck Chunder Mussant v. Ganga Narain Mussant* (20 W. R. 111), referred to. Under a proper interpretation of the preamble and s. 4 of the Limitation Act (XV. of 1877), the rule of limitation is confined to the litigants, and is inapplicable to acts which the Court may, or has to, perform *suo motu*. S. 206 of the Civil Procedure Code empowers a Court of its own motion to amend its decree, and the mere fact that one of the parties has made an application asking the Court to exercise that power will not render the action of the Court subject to the rule of limitation. *Robarts v. Harrison* (I. L. R., 7 Cal. 333), *Vithal Janardan v. Rakmi* (I. L. R., 6 Bom. 586), and *Kylasa Goundan v. Ramasami Ayyar* (I. L. R., 4 Mad. 172), referred to.—*Dhan Singh v. Basant Singh*, I. L. R., 8 All. 519. [July 1, 1886.]

APPLICATIONS to the Court under s. 206 of the Code of Civil Procedure are not governed by the Limitation Act. A Small Cause Court rejected an application made under s. 206 of the Code of Civil Procedure to bring a decree into conformity with the judgment, on the ground that a former application had been dismissed for default, and the petitioner was bound to apply within one month from the date of dismissal, and was now too late. On an application to the High Court under s. 622 of the Code to set aside this order, held that the High Court could not interfere.—*Jivráji v. Pragji*, I. L. R., 10 Mad. 51. [Sep. 24, 1886.]

AN application, under s. 206 of the Civil Procedure Code (Act XIV. of 1882), to correct errors in a decree, not being one within the purview of art. 178 of sch. 2 of the Limitation Act (XV. of 1877), is not governed by any limitation, and can be made at any time such errors are discovered.—*Shivápa v. Shivpangh Lingápa*, I. L. R., 11 Bom. 284. [Oct. 8, 1886.]

CERTAIN plaintiffs were the holders of the following decree obtained on mortgage-bond: "It is ordered that the defendants shall pay to the plaintiffs the sum of Rs. 2,550 and costs Rs. 312, total Rs. 2,862, within two months from the date of the signing of the decree; interest will run on the said amount at the rate of 6 per cent. per annum up to realisation. If the defendants do not pay the amount within the time prescribed, they will lose their right of redeeming the property mortgaged, and possession thereof will be given to the plaintiffs." On the judgment-debtors making default, the decree-holders applied for execution, the Subordinate Judge directed execution to issue, but held that execution could not be had for costs under the terms of the decree; and this order was upheld by the District Judge on appeal. Held that the decree-holders were entitled to their costs of the suit from the judgment-debtors personally, or from properties belonging to the judgment-debtors other than those mortgaged.—*Rutnessur Sefh v. Jusoda*, I. L. R., 14 Cal. 185. [Dec. 6, 1886.]

ART. 178 of sch. 2 of the Limitation Act (XV. of 1877) applies only to applications made to a Court to exercise powers which, without being moved by such application, it is not bound to exercise, and not to applications made to a Court to do acts which it has no discretion to refuse to do. It does not govern an application under s. 206 of the Civil Procedure Code for amendment of a decree so as to bring it into conformity with the judgment, it being the bounden duty of a Court, of its own motion, to see that its decrees are in accordance with the judgments, and to correct them if necessary. *Gaya Prasad v. Sikri Prasad* (I. L. R., 4 All. 23) dissented from. In the Matter of the Petition of *Kishan Singh* (Weekly Notes, 1883, p. 262), *Kylasa Goundan v. Ramasami Ayyar* (I. L. R., 4 Mad. 172), and *Vithal Janardan v. Vithojirav Putlajirav* (I. L. R., 6 Bom. 586), referred to.—*Darbo v. Kesho Rai*, I. L. R., 9 All. 364. [Jun. 31, 1887.]

207. When the subject-matter of the suit is immoveable property, and

Decree for recovery of im- such property is identified by boundaries or by
moveable property. numbers in a record of settlement or survey, the
decree shall specify such boundaries or numbers.

208. When the suit is for moveable property, if the decree be for the

Decree for delivery of mo- delivery of such property, it shall also state the Extending to
veable property. amount of money to be paid as an alternative if Provincial S.
C. Courts.
delivery cannot be had.

209. When the suit is for a sum of money due to the plaintiff, the

In suits for money, decree Court may, in the decree, order interest at such
may order certain interest to rate as the Court deems reasonable to be paid on
be paid on principal sum ad- the principal sum adjudged, from the date of the
judged. suit to the date of the decree, in addition to any

Ditto.

interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

THE contract rate of interest must be allowed up to the date of decree in accordance with Act XXVIII. of 1855, s. 2. The Civil Procedure Code, s. 209, does not expressly refer to suits in which interest has been contracted for, and does not repeal the former Act.—*Bandaru Swami Naidu v. Atchayamma*, I. L. R., 3 Mad. 125. [Mar. 23, 1881.]

A DECREE for money directed that its amount should be payable "according to the terms of the judgment-debtor's written statement." In his written statement the judgment-debtor had promised to pay interest on the judgment-debt if the same were not discharged by a certain day. *Held*, having regard to the decision of the Full Bench in *Debi Charan v. Pirbhu Din* (I. L. R., 3 All. 388), that the judgment-debtor having failed to discharge the judgment-debt by such day, he was bound by the terms of the decree to pay interest on its amount.—*Ram Nandan Rai v. Lal Dhar Rai*, I. L. R., 3 All. 775. [May 9, 1881.]

A DECREE directed accounts to be taken "up to the time of payment hereinafter mentioned, or until six months from the date of the decree," whichever first should happen; and further directed the plaintiff to pay what should be reported due for principal and interest up to the date of payment, and costs, with interest at 6 per cent. from the date of taxation until payment, within six months after the Registrar should make his report. The plaintiff tendered a sum sufficient to cover the principal and interest due, but insufficient to cover costs, at a time prior to the drawing up of the Registrar's report. *Held* that the payment of principal and interest "hereinafter mentioned" referred to a time after the Registrar had made his report, because the sum to be paid was a sum reported to be due by the Registrar, and that, therefore, a tender made before the Registrar's report was given was not a sufficient tender to stop interest from the date of the tender.—*Administrator-General of Bengal v. Mirza Ahmed Begg*, I. L. R., 9 Cal. 33. [July 12, 1882.]

A DECREE, of which the terms had been arranged by a solehnâma between the parties, for payment of money by instalments, with interest at six per cent., was construed to provide also for three contingencies, viz., non-payment at due date: (a) of the first instalment, two consecutive instalments being in arrear at the same time; (b) of instalments other than the first; (c) of the first instalment simply. Upon the occurrence of (a), or of (b), execution might issue for the whole decretal money with interest thereon at twelve per cent. Upon the occurrence of (c) execution might issue for that instalment, with interest at twelve per cent. from the date of the decree. The decree-holder having accepted payment of the first instalment on the footing of (c), *held* that he had not, by any admission or settlement, precluded himself from insisting on the above construction as to (b). *Held* also that these provisions for double interest were but a reasonable substitution of a higher rate of interest for a lower in a given state of circumstances, and were not in the nature of a penalty against which equitable relief might be claimed.—*Balkishen Das v. Run Bahadur Singh*, I. L. R., 10 Cal. 305. [July 11, 1883.]

Extending to
Provincial S.
C. Courts.

210. In all decrees for the payment of money, the Court may, for any

• Decree may direct payment sufficient reason, order that the amount shall be
by instalments. • paid by instalments, with or without interest.

• And, after the passing of any such decree, the Court may, on the application of the judgment-debtor, and with the consent of the decree-holder, order that the amount decreed be paid by instalments on such terms as to the payment of interest, the attachment of the property of the defendant, or the taking of security from him, or otherwise, as it thinks fit.

Save as provided in this section and section 206, no decree shall be altered at the request of parties.

THE word "debt" in ss. 20 and 21 applies only to a liability for which a suit may be brought, and does not include a liability for which judgment has been obtained. Therefore, where the last application for execution of a decree had been made on the

14th December 1872, and a notice under Act VIII. of 1859, s. 216, issued on the 19th January 1873, and on the 28th April 1873, the judgment-debtor filed a petition notifying part-payment, which petition was signed by the judgment-creditor, *held*, in an application for execution made on the 27th April 1876, that further execution was barred by limitation (Act IX. of 1871).—*Kally Prosonno Hazra v. Heera Lal Mundle*, I. L. R., 2 Cal. 468. [June 21, 1877.]

Quere.—Whether “a decree for the payment of money” means merely what is commonly known as a money-decree, or includes a decree in which a sale is ordered of immoveable property in pursuance of a contract specifically affecting such property, within the meaning of s. 194 of Act VIII. of 1859 and s. 210 of Act X. of 1877. Where Court, on the ground that the defendant was “hard pressed,” directed the amount of a decree to be paid by instalments extending over ten years, and allowed only one-half of the usual rate of interest, *held* that there was no sufficient reason for directing payment of the amount of the decree by instalments, and that such Court had exercised its discretion injuriously to the plaintiff, by the length of the period over which the instalments were extended, and by allowing a rate of interest less than the ordinary rate.—*Binda Prasad v. Madho Prasad*, I. L. R., 2 All. 129. [Jan. 31, 1879.]

In exercise of the discretion given by s. 194 of the Code of Civil Procedure (Act VIII. of 1859), the Court of first instance gave a decree to the plaintiff making the amount awarded payable by instalments, but gave no interest after the institution of the suit. The Appellate Court amended the decree by awarding the interest from the institution of the suit at six per cent. per annum, the rate originally contracted for being twenty-four per cent. per annum. *Held*, although the stipulated rate was properly awardable, the award of the lower rate was not illegal or beyond the competency of the Court below, with whose discretion the High Court will not interfere. A mortgagee is, as a general rule, entitled to the costs of enforcing his security; but where the Court, in consideration of his usurious bargain, declines to award them wholly or in part, the High Court will not interfere.—*Corvalho (J.) v. Nur Bibi*, I. L. R., 3 Bom. 202. [Feb. 17, 1879.]

ACT X. of 1877, s. 210, is not applicable in a suit for the recovery of the amount of a bond-debt by the sale of the property hypothecated by such bond. In such a suit, therefore, the Court cannot direct that the amount of the decree shall be payable by instalments.—*Hardeo Das v. Hukam Singh*, I. L. R., 2 All. 320. [May 29, 1879.]

WHERE a bond is payable by instalments, and expressly stipulates for the payment of the whole debt on failure in the payment of any instalment, the law of limitation runs on the whole amount of the bond against the obligee from the day on which the obligor first makes default in the payment of any instalment, unless the obligee waive the default, and afterwards from the day on which any fresh default is made in respect of which there is no waiver. The obligee may waive the default under Act IX. of 1871 and XV. of 1877, sch. 2, art. 75, but the Courts may have no authority to compel him to waive it. Neither Act VIII. of 1859, s. 194, nor Act X. of 1877, s. 210, confers any authority on the Courts to relieve a contracting party from such an express stipulation in a bond payable by instalments as to the consequence of default in punctual payment of the instalments. A debt being presently due, an agreement to pay it by instalments, with a stipulation that, on default, the creditor may demand immediate payment of the whole balance due with interest, is not to be relieved against in equity. Such a stipulation is not in the nature of a penalty, inasmuch as its object is only to secure payment in a particular manner. The defendant executed to the plaintiff a bond payable by instalments, and expressly stipulating for the payment of the whole amount on failure to pay any instalment on the day fixed. He paid the first instalment, but made default in paying the second, which fell due on the 3rd August 1878. On the 20th August plaintiff sued to recover the whole balance due on the bond. Defendant admitted the bond, but pleaded tender of the amount of the second instalment soon after the due date, and prayed for payment by instalments without any interest. The first Court passed a decree in the plaintiff's favour for the amount claimed with costs, but ordered defendant to pay Rs. 100 and the costs at once, and the balance by yearly instalments of Rs. 100 each with interest at 6 per cent. till payment. The District Judge, in appeal, affirmed the decree, with a slight variation as to interest, which he directed the defendant to pay on overdue instalment only. *Held* by the High Court on second appeal that neither of the lower Courts has jurisdiction, without the consent of the parties, to substitute, for the contract made by them, terms which the Court preferred. *Held* also that plaintiff was entitled to sue on the day after that on which the default was made, *viz.*, on the day after that fixed for the payment of the instalment, and that the Subordinate Judge had no power to rule the contrary.—*Ragho Govind Paranjpe v. Dipchand*, I. L. R., 4 Bom. 96. [Aug. 26, 1879.]

THERE is nothing in Act X. of 1877, s. 210, or elsewhere in that Act, authorizing a Court to direct that the amount of a decree should be paid within a fixed time from its date. *Semle*.—That s. 210 is not applicable in a suit for the recovery of the amount of a bond-debt by the sale of the *nankar* allowance hypothecated by such bond.—*Bachchu v. Madad Ali*, I. L. R., 2 All. 649. [Jan. 26, 1880.]

THE words "decree passed against an agriculturist" in s. 20 of the Dekkhan Agriculturists' Relief Act (XVII. of 1879) mean a decree passed against an agriculturist personally, and do not include decree for the recovery of money by the sale of mortgaged property. The effect of that section must be taken to be an enlargement of the indulgence granted by s. 210 of the Civil Procedure Code (Act X. of 1877), but only in those cases to which the latter section applies. By s. 210 of the Civil Procedure Code, the Court may, after the passing of a decree in money-suits, order the amount to be paid by instalments, provided the decree-holder consents. By s. 20 of Act XVII. of 1879 the Court may make the same order in similar suits, without the consent of the decree-holder. In the case of a debt secured by a mortgage, the agriculturist's remedy lies in a suit, not for an account, but for redemption; and the only decree which can be made in such a suit, in the absence of any special provision in the Act, is the ordinary decree for payment of the whole amount within six months, or, in default, for foreclosure. *Hardeo Das v. Hukam Singh* (I. L. R., 2 All. 320) referred to and approved.—*Shankarāpa Dargo Patel v. Dānapa Virantāpa*, I. L. R., 5 Bom. 604. [Mar. 25, 1881.]

A JUDGMENT-DEBTOR, whose property was about to be sold, appeared before the officer appointed to conduct the sale, and applied for its postponement, producing a surety and a bond, in which such surety promised to pay the amount of the decree within one year, if the judgment-debtor did not do so. Such officer thereupon applied to the District Judge to postpone the sale, stating that such surety was willing to pay the amount of the decree by instalments within one year, and forwarding such bond. The District Judge ordered the sale to be postponed, and the papers to be sent to the Munsif who had made the decree and ordered the sale of the property. The Munsif made no order regarding the security, but merely made an order that the amount of the decree should be paid by instalments within one year. The judgment-debtor did not pay the amount of the decree within the time fixed, and the decree-holder therefore applied for execution of the decree against such surety. *Held* that, inasmuch as the decree-holder had not been a party to the proceedings of the sale-officer or of the District Judge, and as the parties had not appeared before the Munsif, and as such surety had not agreed to pay the amount of the decree by instalments, the provisions of s. 210 of Act X. of 1877 were not applicable, and such surety had not become a party to the decree as altered by the Munsif; that such surety had not made himself a party to the decree by promising to pay its amount within one year; and that therefore his liability was not one which could be enforced in execution of the decree under s. 253 of Act X. of 1877.—*Chandan Kuar v. Tirkha Ram*, I. L. R., 3 All. 809. [May 27, 1881.]

WHEN a decree was passed by consent in 1872 for payment to plaintiff through the Court of Rs. 300 by fifteen annual instalments on the 20th February in each year, and in default of payment of any instalment the whole amount became recoverable, and four years' instalments were paid out of Court, and default made on the 20th February 1877, and plaintiff applied to recover the instalment of 1877 by execution on the 17th November 1879 and the 1st March 1880, *held* that the application of November 1879 was not barred under cl. b, art. 179, sch. 2 of the Limitation Act of 1877, inasmuch as, when the Indian Limitation Act, 1877, came into force (1st October 1877), the application was not barred under cl. b, art. 167, sch. 2 of the Indian Limitation Act, 1871. *Held* also that the provision as to the whole amount becoming recoverable at once if default was made did not affect the admissibility of the application for execution, because that provision had not been enforced, and the obligation to pay by instalments was still subsisting.—*Karakavalsa Appayya v. Kāranam Papayya*, I. L. R., 3 Mad. 256. [Aug. 11, 1881.]

A COLLECTOR, to whom a decree for sale of mortgaged property has been transferred for execution under s. 320 of the Civil Procedure Code, is limited to one of the three courses specified in s. 321, and may not depart from them; much less may he do what the Court itself could not do in such a case—allow payment of the debt to be made by instalments. A Collector, to whom a decree has been so transferred for execution, acts ministerially, and, when he delegates his functions to an assistant or a *māmlatdar*, incurs a risk of having to answer in damages to the person who is by any error or mistake deprived of the fruits of his judgment; and this risk attaches independently of malice or negligence. The Court that has made a decree or judicial order, which has been transmitted to the Collector for execution, is not deprived of the judicial powers with respect to it, which may still at any particular time be competent to such

Court, and which it would have had had the order been placed in the hands of its own ordinary officer, the *uazir*. In the exercise of such powers the Court has authority to recall its own record transmitted to the Collector.—*Mahádaji Karandikar v. Hari D. Chikne*, I. L. R., 7 Bom. 332. [June 28, 1883.]

On the 26th of June 1878, a judgment-debtor applied under s. 210 of the Code of Civil Procedure for two years' time to pay the amount of the decree which was dated 12th March 1878. Notice having been given to the judgment-creditor, an *ex-parte* order was made allowing the judgment-debtor two years' time to pay, but the decree itself was not altered in accordance with this order. On the 9th of July 1882, the decree-holder applied for execution of the decree. *Held* that the application was not barred by limitation.—*Tata v. Rámáchandra*, I. L. R., 7 Mad. 152. [Sep. 7, 1882.]

THE parties to a decree for money, dated the 14th July 1871, entered into a compromise, whereby, in lieu of a portion of the decretal money, the decree-holder placed in possession of certain property, and the remainder of the decretal money was to be paid by fixed annual instalments, and, in case of default in the payment of any instalment, it was agreed that the entire amount should become immediately realizable by execution of the decree. On the 11th December 1882, the decree-holder, alleging default in payment of the instalments, applied for execution of the compromise. *Held* that such an agreement could not be treated as an instalment-decree, and, as such, capable of execution. *Debi Rai v. Gokal Prasad* (I. L. R., 5 All. 585) followed.—*Ramlakhan Rai v. Bakhtaur Rai*, I. L. R., 6 All. 623. [July 11, 1884.]

On the 23rd February 1878, an application was made for execution of a decree dated the 3rd December 1877, in which the decree-holder stated that the judgment-debtor had agreed to pay the balance then due on the 13th August 1878. The application was then struck off on the 26th June 1878. On the 30th June 1881, the decree-holder again applied for execution, and on the 11th July 1881, the judgment-debtor, with the consent of the decree-holder, applied for time to pay the balance due till the 8th September 1881, and that application was also struck off. On the 1st March 1883, the decree-holder again applied for execution. *Held* that the application was not barred by limitation upon the ground that the application by the judgment-debtor, made on the 11th July 1881, alleging that he had come to an arrangement with the decree-holder for the payment of the amount due by instalments, having resulted in its being registered and the proceedings struck off, amounted to a direction that the decretal amount be paid by instalments as stipulated in the petitions, and that this being so, there was a decree passed on that date under the provisions of the second paragraph of s. 210 of the Code of Civil Procedure, of which the decree-holder was entitled to have execution.—*Jhoti Sahu v. Bhugun Gir*, I. L. R., 11 Cal. 143. [Dec. 4, 1884.]

AN application to execute a decree, dated 30th August 1880, was made 25th May 1881. While the application was pending, the judgment-debtor presented a petition to be allowed to pay the debt by instalments, and the decree-holder consenting to this, the Court made the following order: "According to the application of both parties it is ordered that the case be struck off, and the decree be returned." The details of the instalments mentioned in the petition were endorsed on the decree by one of the amlaqs of the Court, but it did not appear when or by whose order this was done. In an application for execution in accordance with this arrangement made on 7th March 1885, *held* that the order was not one recognising or sanctioning the arrangement within the meaning of s. 210 of the Civil Procedure Code, inasmuch as the Court at the time it made the order had no power to make any order for instalments, any application for that purpose being then barred by art. 175 of Act XV. of 1887. The application for execution was, therefore, barred under art. 179 as not having been made within three years of 25th May 1881. *Jhoti Sahu v. Bhubun Gir* (I. L. R., 11 Cal. 143) dissented from.—*Abdul Rahaman Soda-gur v. Dullaram Marwari*, I. L. R., 14 Cal. 348. [July 22, 1886.]

*211. When the suit is for the recovery of possession of immoveable

In suits for land, Court may decree payment of mesne profits with interest.

property yielding rent or other profit, the Court may provide in the decree for the payment of rent or mesne-profits in respect of such property from the institution of the suit until the delivery of possession to the party in whose favour the decree is made, or until the expiration of three years from the date of the decree (whichever event first occurs), with interest thereupon at such rate as the Court thinks fit.

Explanation—'Mesne-profits' of property mean those profits which the person in wrongful possession of such property actually received, or might, with ordinary diligence, have received, therefrom, together with interest on such profits.

WHERE the parties to a suit for certain land and for the payment of mesne-profits in respect of the same were co-sharers in the estate comprising such land, and the defendants had themselves occupied and cultivated such land, *Held* that the most reasonable and fitting mode of assessing such mesne-profits was to ascertain what would be a fair rent for such land if it had been let to an ordinary tenant and had not been cultivated by the defendants. Both parties appealed from the decree of the Court of first instance, and both the appeals were dismissed by the lower Appellate Court. The plaintiff appealed to the High Court from the decree of the lower Appellate Court dismissing his appeal, whereupon the defendant took objections to the decree of the lower Appellate Court dismissing his appeal. *Held* that such objections could not be entertained.—*Ganga Parsad v. Gajadhar Parsad*, T. L. R., 2 All. 651. [Jan. 29, 1880.]

212. When the suit is for the recovery of possession of immoveable

Court may determine amount of mesne-profits prior to suit, or may reserve inquiry.

property and for mesne-profits which have accrued on the property during a period prior to the institution of the suit, and the amount of such profits is disputed, the Court may either determine the amount by the decree itself, or may pass a decree for the property, and direct an inquiry into the amount of mesne-profits, and dispose of the same on further orders.

In the course of a suit for declaration of right to property, and for partition, a compromise was entered into, by which it was agreed that certain property already ascertained should be divided in certain proportions, and that certain other property, not yet ascertained, should, on being ascertained, be partitioned on the same basis. The Court merely recorded the compromise, and declared that the decree should be according to terms therein set out. *Held* that this decree could be only executed as to the property which had been ascertained as divisible, and that as to the other property the decree must be taken as declaratory only. The Court executing a decree is bound by the terms of the decree, and it is only in cases provided for by ss. 211 and 212 of Act X. of 1877, corresponding with ss. 196 and 197 of Act VIII. of 1859, that it is at liberty to determine the rights of the litigants in proceedings taken after decree.—*Ram Lajit Ram v. Chooaram*, 4 C. L. R. 97. [Mar. 24, 1879.]

213. When the suit is for an account of any property and for its due

Administration-suit.

administration under the decree of the Court, the Court, before making the decree, shall order such accounts and inquiries to be taken and made, and give such other directions, as it thinks fit.

In the administration by the Court of the property of any person who dies after this Code comes into force, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities proveable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being with respect to the estates of persons adjudged insolvent;

and all persons who, in any such case, would be entitled to be paid out of such property, may come in under the decree for its administration, and by the same claims against the same as they may respectively be entitled to derive of this Code.*

* The words, "Applications under s. 205 of the Indian Contract Act, 1872, shall be deemed to be within the meaning of this section," have been repealed by Act IV. of 1886, s. 2.

A suit for winding up an expired partnership can be brought in the District Court under s. 265 of the Contract Act (IX. of 1872) and s. 213 of the Civil Procedure Code (Act XIV. of 1882). But the jurisdiction of the ordinary Courts is not annulled by the special jurisdiction assigned to the District Court by s. 265 of the Contract Act. Any one having a cause of action arising out of partnership-transactions may sue the person liable in the ordinary Court. The jurisdiction of such Court, however, does not extend to the case of a winding up of an expired partnership. This jurisdiction is given to the District Court by s. 265 of the Contract Act, and when, along with a new mode of relief, particular jurisdiction is constituted to administer it, the Court specified, and no other, is to be understood as vested with authority. Hence, though administration for the purpose may apparently be sought in the subordinate Courts, it can be obtained, in the case of an expired partnership, only in the District Court or the High Court. But the jurisdiction of the subordinate Courts in other respects is not extinguished. An apparent cause of action gives a right to sue in them for such relief as they can afford, though not for the particular kind of relief contemplated in s. 265 of the Contract Act. Where, in a cause of action appears which in itself is cognizable by an inferior Court, such a Court is not justified in rejecting the suit, merely because it is one in which the District Court might have jurisdiction under s. 265 of the Contract Act. Where an application under s. 265 of the Contract Act is presented to the District Court, that Court should determine whether it is (1) a mere case of administration; or (2) of administration sought as a cloak for strictly litigious claim; or (3) of administration *plus* claims involving litigation of the ordinary means. In the second case it may properly decline a function that properly belongs to an ordinary Court. In the last case, it may either assume the administration of the estate of the firm, or decline to do so, according to circumstances subject to appeal, and, in the former case, it may either itself deal with all questions arising between the partners, or if these be of such a kind as to form separable subjects of adjudication, it can direct the party in each case interested to proceed on the particular alleged cause of action in the Court having ordinary jurisdiction, and itself use the result as an element of its administration.—*Adarji Dorabji v. Erakshah Dhanji*, I. L. R., 8 Bom. 272. [Jan. 28, 1884.]

214. When the suit is to enforce a right of pre-emption in respect of a

Suit to enforce right of particular sale of property, and the Court finds for pre-emption. the plaintiff, if the amount of purchase-money has not been paid into Court, the decree shall specify a day on or before which it shall be so paid, and shall declare that, on payment of such purchase-money, together with the costs (if any) decreed against him, the plaintiff shall obtain possession of the property, but that, if such money and costs are not so paid, the suit shall stand dismissed with costs.

THE decree of the Court of first instance in a suit to enforce a right of pre-emption directed that the sum which that Court had ascertained to be the purchase-money should be deposited within one month from the date of the decree. Plaintiff appealed, contending that such sum was not the purchase-money. While the appeal was pending, the time fixed by the decree of the Court of first instance expired without any deposit having been made. The Appellate Court dismissed the appeal, fixing by its decree, of its own motion, a further time for the deposit. *Held* that the Appellate Court was competent to extend the time for making the deposit, and its action and order did not contravene the provision of Act X. of 1877, s. 214.—*Parshadi Lal v. Ram Dial*, I. L. R., 2 All. 744. [Feb. 13, 1880.]

M SUEDE K and J to enforce a right of pre-emption in respect of property which he alleged K had sold to J. K denied that she had sold such property to J. J set up as a defence that M had waived his right of pre-emption. The Court of first instance dismissed the suit on the ground that the alleged sale had not taken place. J appealed, making M and K respondents. The lower Appellate Court dismissed the appeal, also holding that the alleged sale had not taken place. J then appealed to the High Court, making K the respondent. *Held* that neither the appeal from the original decree in the suit, nor the appeal from the appellate decree therein, was admissible. *Held* also that the finding as to the alleged sale was one between the plaintiff and defendants in the suit, and not between the defendant-vendor and the defendant-vendee who were litigating, and would not bar adjudication of the matter in issue between them in a suit brought by the latter for the establishment of the sale.—*Jumna Singh v. Kamar-un-nisa*, I. L. R., 3 All. 152. [Aug. 12, 1880.]

THE decree in a suit to enforce a right of pre-emption, dated the 12th December 1879, declared that the plaintiff should obtain possession of the property on payment of the purchase-money "within thirty days," but that, if such money was not so paid, the suit should stand dismissed. The period specified in the decree for the payment of the purchase-money, the day on which the decree was made not being computed, expired on the 11th January following. That day was a Sunday. The plaintiff paid the purchase-money into Court on the next day, the 12th January. *Held* that, inasmuch as the day on which the decree was made should not be taken into account in computing the period specified in the decree for the payment of the purchase-money, nor the last day of that period, that day being a Sunday, the plaintiff had complied with the condition imposed on him by the decree. *Semle*.—That, if the plaintiff had actually failed to deposit the purchase-money within thirty days as directed by the decree, his suit would have been liable to be dismissed, as he could not have claimed to have such period computed from the date the decree became final.—*Dabi Din Rai v. Muhammad Ali*, 1. L. R., 3 All. 850. [June 14, 1881.]

THE plaintiff in a suit to enforce a right of pre-emption obtained a decree to the effect mentioned in s. 214 of the Civil Procedure Code. On payment by him of the purchase-money into Court, the defendants objected, in the execution-department, to such payment on the ground that it had not been made within time. The Court which made the decree disallowed the objection. The defendants appealed from the order disallowing the objection. They had previously appealed from the decree. The Appellate Court heard both appeals together, and, holding that the purchase-money had not been paid into Court within time, reversed the decree, and allowed the objection. The plaintiff preferred a second appeal to the High Court from the Appellate Court's decree, which was admitted. He also preferred an appeal from the appellate order allowing the objection, but this appeal was rejected as being beyond time, and such order became final. *Held* that, inasmuch as the question whether the plaintiff had paid the purchase-money into Court within time was not one relating to the execution of the decree within the meaning of s. 244 of the Civil Procedure Code, but was one which should be decided in the suit itself, and therefore the proceedings in the execution-department touching that question were ill-founded, such order was not a bar to the hearing of the second appeal preferred by the plaintiff.—*Muhammad Ali v. Debi Din Rai*, 1. L. R., 4 All. 420. [May 5, 1882.]

THE decree in a suit to enforce a right of pre-emption directed, in accordance with the provisions of s. 214 of the Civil Procedure Code, that the plaintiff should obtain possession of the property and recover costs of the suit from the defendants (vender and vendee) on payment of the purchase-money within a fixed time, but that, on default of such payment, the suit should stand dismissed. The plaintiff deposited within time the purchase-money with the exception of a sum less than the amount of costs awarded to him. He subsequently applied for delivery of possession of the property in execution of the decree and for the recovery of the costs awarded to him, deducting from such costs the unpaid portion of the purchase-money. *Held*, applying, by analogy of ss. 221 and 247 of the Civil Procedure Code, the equitable doctrine of set-off, that the plaintiff was entitled, when depositing the purchase-money under the decree, to deduct therefrom the sum the decree awarded to him as costs, and that, therefore, the decree did not become null and void by reason that he had not deposited the full amount of the purchase-money within time. *Degumburee Dabee v. Eshan Chunder Sein* (9 W. R. 230), *Jago Mohun Bukehee v. Soorendro Nath Roy Chowdhry* (3 W. R. 106), and *Brijnath Dass v. Juggarnath Dass* (1. L. R., 4 Cal. 742), referred to.—*Ishri v. Gopal Saran*, 1. L. R., 6 All. 361 [May 19, 1884.]

215. When the suit is for the dissolution of a partnership, the Court, before making its decree, may pass an order fixing the day on which the partnership shall stand dissolved, and directing such accounts to be taken and other acts to be done as it thinks fit.

In a suit for an account of partnership-transactions, the Subordinate Judge, in whose Court the suit was instituted, framed certain issues with the object of ascertaining who managed the business; with whom the partnership-property was; whether the defendants ought to account; what was the capital, and what the expenditure and profits of the firm; and, after taking evidence on those points, dismissed the suit. *Held* that the Subordinate Judge should have followed the course pointed out in forms 132 and 133 of sch. 4 of the Civil Procedure Code, and at the first hearing should have determined whether there had been a partnership; what were its conditions; was it dissolved, or ought it to be

dissolved; and who were the parties interested, and in what shares; and, upon determining these questions, should have directed accounts to be taken; and, after the accounts had been taken, should have made a final decree. *Held* also that the suit should not have been instituted in the Court of the Subordinate Judge, and the case was transferred to the Court of the District Judge. The plaint in a partnership-suit ought to be framed on the lines of form 113 in sch. 4 of the Code, and the accounts should be taken as prayed in that form. Under ordinary circumstances, the costs of a partnership-suit should be paid out of the assets of the partnership, or, in default of assets, by the partners in proportion to their respective shares, unless any partner denies the fact of a partnership, or opposes obstacles to the taking of the accounts, and so renders a suit necessary, when he is usually made to pay the costs up to the hearing.—*Ram Chunder Shaha v. Mahick Chunder Banikya*, I. L. R., 7 Cal. 428. [May 30, 1881.]

T, B, R, and W, the owners of a certain estate in equal shares, in 1863 entered into a partnership "for the cultivation of tea and other products" upon such estate. In 1864, H, E, and I, joined the firm. In 1870 H died; and in 1871 T purchased his share and those of E and I, and in 1873 of R. In 1875, T gave the Delhi and London Bank a mortgage on such estate as security for the repayment of money which he had borrowed from the Bank ostensibly for the purposes of the estate. The Bank obtained a decree against him personally for the money, in execution of which his rights and interests in the estate were put up for sale on the 20th June 1877, and were purchased by the Bank, which obtained possession of the estate in August 1877. In August 1879, B and W's executor sued T and the Bank, claiming a declaration that they were or had been partners with T in the estate; that if the partnership should be held to be subsisting, it might be dissolved, or that, if it had ceased to exist, the date of its termination might be fixed; and that, in either event, a liquidator might be appointed to take an account, and, after realizing assets and discharging liabilities, might be ordered to pay them each one-third of such balance as remained. The suit was instituted in the Court of a District Judge. He transferred it to the Court of a Subordinate Judge. The High Court subsequently transferred it to its own file. *Held* that the suit was not one falling within the purview of s. 265 of the Contract Act; but assuming that it was such a suit, and the Subordinate Judge had no jurisdiction, the High Court was nevertheless competent to transfer it. That the Bank, as T's representative by purchase, had been properly joined as a defendant in the suit. That the period of limitation applicable to the suit was that provided in art. 120, and not art. 106, Act XV. of 1877; but that in either case the suit was within time, as the partnership was dissolved, and consequently time began to run, not from the death of H, or the purchases by T of his share or those of E and I in 1871, or of R in 1873, but in August 1877, when the defendant Bank took possession of the partnership-property. That, as the effect of the purchases by T in 1871 and 1873 was to relieve the estates of H, E and I, and R, of all past and future liabilities of the partnership, in respect of which B and W still continued as liable as T, and to which they would have to contribute to discharge, such purchases should be regarded and treated as made on behalf of the partnership, and therefore, at the time of the execution of the mortgage of the estate, B, W, and T, were interested in the estate to the extent of one-third each. That, although T was not authorized, either actually or impliedly, by B and W to mortgage the estate, and the mortgage therefore was not binding on them, yet as they allowed him to conduct the business of the estate in such a manner as to make it appear that the control and management of it rested with him, and he was, for all ordinary business-purposes, their representative, B and W were bound, in any accounting that might take place, to recoup the defendant Bank for such advances as were made to T for the necessary purposes of the estate, in the same proportion as they must discharge debts due to other creditors. That T was entitled to be reimbursed such moneys of his own as he had expended within the legitimate scope and for the proper purposes of the partnership as originally contemplated by the parties. Directions to the liquidator appointed how to proceed.—*Harrison v. Delhi and London Bank*, I. L. R., 4 All. 437. [April 20, 1882.]

A SUIT for dissolution of a partnership, taking the accounts of the firm, and a declaration of the plaintiff's right to a certain share in the debts due to the firm, was, with reference to the value of the subject-matter of the suit, instituted in the Court of a Munsif. The matters in difference in the suit were eventually referred to arbitration under chap. xxvii. of the Code of Civil Procedure, and an award was given declaring the plaintiff entitled to recover a certain sum from the defendant. Judgment and a decree were given in accordance with the award. *Held* that the award, notwithstanding the question whether the suit was cognizable in the Munsif's Court, was entertainable. *Bhagirath v. Ram Ghulam* (I. L. R., 4 All. 283) referred to. *Held* also that the suit was not an application of the nature mentioned in s. 256 of the Contract Act, 1872, but a suit of the nature mentioned in s. 215 of the Civil Procedure Code, and was, therefore,

not cognizable in the District Court, but in the Court of the Munsif. *Prasad Doss Mullick v. Russick Lall Mullick* (I. L. R., 7 Cal. 157), and *Ram Chunder Shaha v. Manick Chunder Manikya* (I. L. R., 7 Cal. 428), dissented from.—*Kalian Das v. Ganga Sahai*, I. L. R., 5 All. 500. [April 1, 1883.]

Extending to
Provincial S.
C. Courts.

215A. When a suit is for an account of pecuniary transactions between

Suit for account between a principal and agent, and in all other suits not principal and agent. hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before making its decree, pass an order directing such accounts to be taken as it thinks fit.

Ditto.

216. If the defendant has set-off the amount of a debt against the claim

Decree when set-off is at of the plaintiff, and such set-off has been allowed, lowed. the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

The decree of the Court with respect to any sum awarded to the defend-

Effect of decree as to sum ant shall have the same effect, and be subject to the awarded to defendant. same rules in respect of appeal or otherwise, as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

APPLICATION for execution of a decree was made on the 10th November 1869, and on the 27th November 1869, notice issued under s. 216 of the Civil Procedure Code. Again on the 4th February 1873, application was made for execution, and notice was issued on the 19th February 1873, under s. 216. A subsequent application for execution was made on the 31st August 1874, and the order for notice to issue, under s. 216, was made on the same day. The question raised in appeal against the order to issue execution was whether the plaintiff's right to execution was barred, and had been so when the application, dated 31st August 1874, for execution, was made. *Held* on appeal by the High Court (Kernan and Kindersley, J.J.) that as the application for execution on the 4th February 1873, being more than three years after the date of issuing the last prior notice under s. 216, viz., 27th November 1869, was late, under art. 167, para. 5, Act IX. of 1871, execution was barred by limitation at and before the date of that application, and that this bar was not removed by the circumstance that the judgment-debtor had allowed the service of the notice on him in February 1873 to pass unchallenged. *Raja Chiliany v. Rajavulu Naidu* (5 Mad. H. C. R. 100) distinguished. *Held* also (following *Chunder Coomar Roy v. Bhogobutty Prosonno Roy* (I. L. R., 3 Cal. 235) that "applications to enforce a decree" in para. 4 of art. 167, Act IX. of 1871, mean "applications under s. 212 or otherwise by which proceedings in execution are commenced, and not applications of an incidental kind made during the pendency of such proceedings."—*Prabhacara Row v. Potannath*, I. L. R., 2 Mad. 1. [July 29, 1878.]

Certified copies of judgment and decree to be furnished.

217. Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense.

CHAPTER XVIII.

OF COSTS.

Extending to
Provincial S.
C. Courts.

218. When disposing of any application under this Code, the Court may

Costs of applications. give to either party the costs of such application, or may reserve the consideration of such costs for any future stage of the proceedings.

Ditto.

219. The judgment shall direct by whom the costs of each party are

Judgment to direct by whom costs to be paid. to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

If the Official Assignee defends a suit, he is liable, in the event of failure, to be ordered to pay the plaintiff's costs in the same way as any other defendant; and if the estate be insufficient to pay the costs, he will have to bear them personally. It is for him to protect himself by getting a guarantee of indemnity from the parties who set him in motion.—*Devis (James) v. Turner (C. A.)*, I. L. R., 7 Bom. 484. [Sep. 4, 1883.]

220. The Court shall have full power to give and apportion costs of every application and suit in any manner it thinks fit, and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power :

Provided that, if the Court directs that the costs of any application or suit shall not follow the event, the Court shall state its reasons in writing.

Every order relating to costs made under this Code, and not forming part of a decree, may be executed as if it were a decree for money.

In February 1884, the High Court dismissed an application by a Muhammadan *parda-nashin* lady under s. 592 of the Civil Procedure Code for leave to appeal as a pauper from a decree passed in September 1882, on the ground that it was barred by limitation. On the 16th August 1884, an order was passed allowing an application which had been made for review of the said order to stand over pending the decision of a connected case which had been remanded for re-trial under s. 562 of the Code. On the 24th April 1885, the connected case having then been decided, the application for review was heard and dismissed. On the 18th June 1885, an order was passed *ex parte* by Petheram, C.J., allowing the applicant, under s. 5 of the Limitation Act (XV of 1877), to file an appeal on full stamp paper, and she thereupon, having borrowed money on onerous conditions to defray the necessary institution-fees, presented her appeal, which was admitted provisionally by a single Judge. Held by Tyrrell, J. (Mahmood, J., dissenting) that the appellant had made out a sufficient case for the exercise of the Court's discretion under s. 5 of the Limitation Act, and that the Court should proceed to the trial of her appeal. Held by Mahmood, J., that the *ex-parte* order of the 18th June 1885 was one which the Civil Procedure Code nowhere allowed and was *ultra vires*, and that the Bench before which the appeal came for hearing was competent to determine whether the order admitting the appeal should stand or be set aside. *Dubey Sahai v. Ganeshi Lal* (I. L. R., 1 All. 34) referred to. Held also by Mahmood, J. (Tyrrell, J., dissenting), that the circumstances were such as to require the Court to set aside the order admitting the appeal and to dismiss the appeal as barred by limitation, inasmuch as it was presented more than two years beyond time, and neither the facts that the main reason why it was presented so late was that the appellant was awaiting the result of the connected case, nor that the appellant was a pauper and a *parda-nashin* lady, nor the orders of the 16th August 1884, and the 18th June 1885, constituted "sufficient cause" for an extension of the limitation period within the meaning of s. 5 of the Limitation Act. *Moshullah v. Ahmedullah* (I. L. R., 13 Cal. 78) and *Mangu Lal v. Kandhai Lal* (I. L. R., 8 All. 475) referred to. Held further by Mahmood, J., that although, but for the erroneous order of the 18th June 1885, the appellant would neither have borrowed the money required to defray the institution-fees nor preferred the appeal, and this was a circumstance to be considered in the exercise of the discretionary power conferred by s. 220 of the Code, it could not be said that the error of a Court of Justice which leads a party to initiate proceedings against another is sufficient to exonerate the losing party from paying the costs incurred by the opposite party, and that the appeal should therefore be dismissed with costs.—*Husaini Begam v. Collector of Muzaffarnagar*, I. L. R., 9 All. 11. [July 13, 1886.]

221. The Court may direct that the costs payable to one party by another shall be set-off against a sum which is admitted or found to be due. Costs may be set-off against sum admitted or found to be due.

THE decree in a redemption-suit directed the plaintiff (the mortgagor) to pay the mortgage-money and interest to the defendant, and directed the defendant to pay the plaintiff the costs of the suit. Held that the plaintiff was entitled to set-off the amount of his taxed costs against the mortgage-money which he was liable to pay under the decree, notwithstanding any claim that the defendant's attorney might have against the defendant in respect of the defendant's costs of suit.—*Brijnath Dass v. Juggernath Dass*, I. L. R., 4 Cal. 742. [Mar. 25, 1879.]

222. The Court may give interest on costs at any rate not exceeding six per cent. per annum, and may direct that costs, Interest on costs.
Payment of costs out of. with or without interest, be paid out of, or charged subject-matter.
upon, the subject-matter of the suit.

On the 21st August 1876, certain immovable property belonging to M was put up for sale, and was purchased by R. On the 20th April 1877, such sale was set aside under s. 256 of Act VIII. of 1859, on the ground that the order attaching such property and the notifications of sale had not, as required by s. 222, been signed by the Court executing the decree, but by the munsarim of the Court. On the 27th June 1877, M conveyed such property to H, who purchased it *bona fide*, and for value, and satisfied the incumbrances existing thereon. On the 15th April 1878, R sued H and M to have the order setting aside such sale set aside, and to have such sale confirmed in his favour, on the ground that it had been improperly set aside under s. 256 of Act VIII. of 1859, the judgment-debtor not having been prejudiced by the irregularities in respect whereof such sale had been set aside. *Held* (by Oldfield, J.) that although such sale might have been improperly set aside, yet inasmuch as the order of attachment and the notifications of sale could have no legal effect, having been signed by the munsarim of the Court executing the decree, and not by the Court, as required by s. 222 of Act VIII. of 1859, and inasmuch as it would be inequitable, after the incumbrances on such property had been satisfied and the state of things changed, to allow R, after standing by for a year, and permitting dealings with the property, to come in and take advantage of the change of circumstances, and obtain a property become much more valuable at the price he originally offered, R ought not to obtain the relief which he sought. *Held* (by Straight, J.) that the fact that the Court executing the decree had not signed the order of attachment and the notifications of sale vitiated the proceedings in execution *ab initio*, and rendered the sale which R desired to have confirmed void, and R's suit therefore failed, and had properly been dismissed.—*Ram Dial v. Mahtab Singh*, I. L. R., 3 All. 701. [April 26, 1881.]

A SUCCESSFUL appellant in an appeal to the High Court applied, in execution of his decree, for a refund of a sum of money which he had paid to the respondent, by way of costs with interest thereon, in execution of the lower Court's decree. He further applied for interest on the refund claimed at the rate of Rs. 6 per cent. per annum. The respondent objected to paying interest on the refund. *Held* that the appellant was entitled to the interest claimed on the refund of costs. *Forester v. Secretary of State for India in Council* (I. L. R., 3 Cal. 161) referred to.—*Ram Sahai v. Bank of Bengal*, I. L. R., 8 All. 262. [April 28, 1886.]

CHAPTER XIX.

OF THE EXECUTION OF DECREES.

A.—Of the Court by which Decrees may be executed.

Extending to
Provincial S.
C. Courts.

223. A decree may be executed either by the Court which passed it, Court by which decree may or by the Court to which it is sent for execution be executed.
under the provisions hereinafter contained.

The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court—

(a) if the person against whom the decree is passed actually and voluntarily resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree, and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers, for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

The Court which passed a decree may, of its own motion, send it for execution to any Court subordinate thereto.

The Court to which a decree is sent under this section for execution shall certify to the Court which passed it the fact of such execution, or, where the former Court fails to execute the same, the circumstances attending such failure.

If the decree has been passed in a case cognizable by a Court of Small Causes, and the Court which passed it wishes it to be executed in Calcutta, Madras, Bombay, or Rangoon, such Court may send to the Court of Small Causes in Calcutta, Madras, Bombay, or Rangoon, as the case may be, the copies and certificate respectively mentioned in clauses (a), (b), and (c) of section 224; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

If the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, if the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

SMALL Cause Courts in the mufassal are not at liberty to execute decrees against moveable property beyond their local jurisdiction.—*Munsuk Mosur das v. Shivaram Devi Singh*, I. L. R., 2 Bom. 532. [Jan. 31, 1878.]

PER GARTH, C.J.—S. 649 of the Civil Procedure Code, as amended by Act XII. of 1879, which explains the meaning of the expression, the "Court which passed the decree," does not exclude the Court which originally passed the decree as being a Court in which an application for execution shall be made, but merely includes another Court. When, therefore, a Court which has passed a decree has ceased to have jurisdiction to execute it, the application for execution may be made either to that Court, although it has ceased to have jurisdiction to execute the decree, or to the Court which (if the suit wherein the decree was passed were instituted at the time of making application to execute it) would have jurisdiction to try the suit. *Per Field, J.*—A Court does not cease to be "the Court which passed the decree" merely by reason that the head-quarters of such Court are removed to another place, or merely because the local limits of the jurisdiction of such Court are altered. An application for the transfer of a decree under the provisions of s. 223 and the following section of Act X. of 1877 is a step in aid of the execution of the decree within the meaning of cl. 4, art. 179, sch. 2 of Act XV. of 1877.—*Lachman Pundeh v. Maddan Mohun Shye*, I. L. R., 6 Cal. 513. [Dec. 10, 1880.]

WHETHER a decree for rent, under Act X. of 1859, made in one district, can be transferred to another for execution, is a question which the High Court can decide in the exercise of its "superintendence over all Courts subject to its appellate jurisdiction," under 24 and 25 Vic., c. 104, s. 15. "Decrees for rent made by the Collector under s. 23 of Act X. of 1859 can be executed by a Civil Court to which they may be transferred under the sections of the Code of Civil Procedure relating to "the execution of a decree out of the jurisdiction of the Court by which it was passed."—*Nilnqui Singh Deo v. Taranath Mukerjee*, I. L. R., 9 Cal. 295. [May 18, 1882.]

THE holders of a decree, made in 1866, against K and certain other persons jointly, applied to recover mesne-profits in execution thereof. K paid the decree-holders the mesne-profits claimed, and then sued his co-judgment-debtors for contribution, and in 1878 obtained a decree against them. Subsequently the holders of the decree of 1866 again applied to recover mesne-profits in execution thereof, and in the proceedings which followed it was decided that mesne-profits were not recoverable under the decree. After this K's representatives applied for execution of the decree of 1878. The lower Courts refused to execute the decree on the ground that, as under the decree of 1866, on which the decree of 1878 was based, mesne-profits were not recoverable, it would not be equitable to allow a decree for contribution passed on a contrary supposition to be executed. *Held* that the lower Courts were not competent to go behind the decree of 1878, but must deal with it as it stood.—*Ramphal Rai v. Ram Barn Rai*, I. L. R., 5 All. 53. [July 17, 1892.]

THE plaintiff in a suit for money obtained a decree against all the defendants except P, and among them K. On appeal the Court of first appeal gave them a decree against P. In execution of this decree they attached, and were paid, as belonging to P, certain money deposited in the Government Treasury in K's name. On appeal by P the Court of second appeal reversed this decree, and restored the decree of the first Court dismissing the suit as regards P. P thereupon applied in execution of his decree for a refund of the money. The plaintiffs objected on the ground that the money belonged to K. *Held* that the Court executing P's decree was not competent to decide the question whether the money belonged to P or to K., such question not being one between P and them only; but involving and raising a question of title between him and K. as to their conflicting claims, *inter se*, to the money.—*Pusai v. Mahadeo Prasad*, I. L. R., 6 All. 12. [July 2, 1883.]

THE Courts of Subordinate Judges invested with the jurisdiction of a Judge of a Small Cause Court under s. 28 of Act XIV. of 1869 does not thereby become "Courts of Small Causes constituted under Act XI. of 1865." They merely exercise a similar jurisdiction. This makes their decisions final in the cases to which the jurisdiction extends, but it does not imply that the variations of procedure prescribed expressly for the Courts constituted under Act XI. of 1865 are applicable to Courts constituted under a different Act and subject to different conditions. The Court of a Subordinate Judge exercising Small Cause Court powers is, under s. 5 of the Code of Civil Procedure (Act XIV. of 1882), one of the "other Courts exercising jurisdiction of a Court of Small Causes," and, as such, its procedure is governed by the Civil Procedure Code without the variations provided by Act XI. of 1865. Under s. 223 (d) of the Civil Procedure Code the Court which has passed a decree in its Small Cause Court jurisdiction may, for any good reason to be recorded in writing, transfer its decree to the other branch of the same Court, as it might to a different Court, for execution, without requiring a certificate under s. 20 of Act XI. of 1865. For this purpose the two branches or sides of the Subordinate Judge's Court may be regarded as different Courts.—*Bhagvan Dayalji v. Balu*, I. L. R., 8 Bom. 230. [Dec. 7, 1883.]

ALTHOUGH by the Madras Civil Courts' Act, 1871, the ordinary jurisdiction of Munsifs is limited in suits and applications of a civil nature to those in which the subject-matter does not exceed in value Rs. 2,500, s. 223 of the Code of Civil Procedure gives jurisdiction to a Munsif's Court to execute a decree in a suit beyond its jurisdiction which has been transferred to it for execution by a District Court.—*Narasayya v. Venkatakrishnayya*, I. L. R., 7 Mad. 397. [Feb. 22, 1884.]

A MUPASSAL Court of Small Causes must adopt the machinery of s. 223 of the Civil Procedure Code in all cases where execution is sought against persons or property outside its local jurisdiction. Such a Court, therefore, cannot attach the salary of a public officer where the same is disbursed outside its local jurisdiction. *Hossein Ally v. Ashotosh Gangooly* (3 C. L. R. 30) followed.—*Parbat Charan v. Panchanand*, I. L. R., 6 All. 243. [Feb. 29, 1884.]

THE Court of a Subordinate Judge and that of a District Munsif had jurisdiction over certain immoveable property. A small-cause decree of the former Court having been sent by the Subordinate Judge to the Court of the District Munsif for execution against the said property under the provisions of s. 20 of Act XI. of 1865 the application for execution was rejected by the Munsif on the ground that this procedure was illegal. *Held* that s. 20 of Act XI. of 1865 was not modified by s. 223 of the Code of Civil Procedure, and that the Munsif's Court was, therefore, bound to execute the decree.—*Kahanaram v. Ranga*, I. L. R., 8 Mad. 8. [Oct. 16, 1884.]

THE plaintiff, having obtained a money-decree against H and others in a suit in the Subordinate Judge's Court at Dhulia, applied for execution by attachment and sale of their immoveable property. That property was accordingly sold, but before the realization of the assets the defendant, who also had obtained a money-decree against the same judgment-debtors in the same Court in its small-cause jurisdiction, applied for the execution of his decree by attachment and sale of the immoveable property, which had already been attached at the instance of the plaintiff. The Court, under s. 205 of the Civil Procedure Code (Act XIV. of 1882), rateably distributed the proceeds of the sale between the plaintiff and the defendant. The plaintiff now brought this suit in the small-cause jurisdiction of the Subordinate Judge's Court at Dhulia to recover from the defendant the amount paid to him, alleging that it had been illegally paid, as the procedure laid down in s. 223 of the Code had not been followed. *Held* that a Subordinate Judge invested with Small Cause Court powers has generally to follow the procedure prescribed in the Code of Civil Procedure. This governs his proceedings both in trial and execution, whether the suit is a small-cause or not. If the two jurisdictions assigned to the Subordinate Judge's Court and to the Subordinate Judge personally are locally co-extensive,

there is, no distinction of sides or branches. But where, as in some cases, the ordinary jurisdiction is wider locally than the small-cause jurisdiction, the Court is, in that part of its territory which lies outside the Small Cause Court jurisdiction, to be regarded as a separate Court, so far, that a decree in a small-cause should not generally be executed on property beyond the small-cause jurisdiction without a transfer, *i. e.* a dealing with the execution as in a suit tried in the usual way, for reasons to be recorded in writing. As all is done by the same Judge, a suggestion and an order recorded in the case are sufficient without a formal transmission to a distant Court.—*Dharamdás Santidás v. Váman Govind*, I. L. R., 9 Bom. 237. [Dec. 23, 1884.]

A DECREE was passed on the 20th February 1878 by the Munsif of M. In November 1878, it was, in accordance with the provisions of s. 223 of the Civil Procedure Code, transferred to the Munsif of J. On the 21st January 1879, an application for execution of the decree was made to the Munsif of J, who thereupon issued an order for the attachment of some immoveable property belonging to the judgment-debtor, and also for the attachment of three decrees standing in his Court in favour of the judgment-debtor against other persons. On the 18th March 1882, the decree-holder applied to the Munsif of J to execute one of these decrees in his behalf, and he further asked that whatever might be realized in such execution should go to the account of the decree which had been transferred, and which was being executed. *Held* that the application of the 18th March 1882 was perfectly legal, and such a proceeding as could keep alive the decree of the 20th February 1878, and that a subsequent application for execution, dated the 12th April 1883, was therefore not barred by limitation. An application to execute an attached decree is a "step in aid of execution" of the original decree within the meaning of art. 179, sch. 2, of the Limitation Act, inasmuch as its object is to obtain money in order to pay off the judgment-debtor.—*Lachman v. Thondi Ram*, I. L. R., 7 All. 382. [Feb. 25, 1885.]

On the 4th of March 1884, a decree-holder applied to the Court of the Subordinate Judge of Moorshedabad (where the decree was passed) for transfer of the decree to the District Court of Beerbhoom for execution. The transfer was made, and, on application by the decree-holder, the judgment-debtor's properties in Beerbhoom were attached. Thereupon the judgment-debtor objected to the attachment, and obtained an order under s. 239 of the Code of Civil Procedure, staying the execution-proceedings. The judgment-debtor then applied to the Court of the Subordinate Judge at Moorshedabad objecting to the execution of the decree on the ground that it was barred by limitation. The objection was overruled by the Subordinate Judge, and his decision was upheld on appeal to the District Judge. On second appeal to the High Court, *held*, that the Moorshedabad Court was competent to hear and determine the plea of limitation. *Held* also that the fact of the judgment-debtor's not raising the plea of limitation in the Beerbhoom Court did not, under the circumstances, preclude him from relying on it in his subsequent application to the Court at Moorshedabad.—*Sriharay Mundul v. Murari Chowdhry*, I. L. R., 13 Cal. 257. [July 2, 1886.]

Procedure when Court desires that its own decree shall be executed by another Court.

224. The Court sending a decree for execution under section 223 shall send,

Extending to Provincial & C. Courts.

(a) a copy of the decree ;

(b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unexecuted ; and

(c) a copy of any order for the execution of the decree, and if no such order has been made, a certificate to that effect.

THE jurisdiction of a Court to which a decree has been transferred for execution is strictly limited to carrying out such execution. Such Court has no power to issue a certificate under ss. 285 and 286 of Act VIII. of 1859, transferring the decree, already transferred to it, to another Court for execution. The Court to which a decree has been properly transferred for execution having struck the case off the file, a subsequent application for a further transfer of the case to another Court for execution should be made to the Court which originally passed the decree sought to be executed. *Bagram v. Wise* (1 B. L. R. 91) considered.—*Shib Narain Shaha v. Bipin Behari Biswas*, I. L. R., 3 Cal. 512. [Jan. 10, 1878.]

IN A suit for partition a compromise was entered into by all the parties except S, and a decree obtained on the terms thereof. In execution S was dispossessed, and presented a petition to the Court, objecting that the decree was not binding on her. The petition was rejected. *Held* that the objection raised by S ought to have been investigated under s. 244 of the Code of Civil Procedure, and that S was entitled to appeal against the order rejecting the petition.—*Sankaravadivammal v. Kumarasamy*, I. L. R., 8 Mad. 473. [April 25, 1885.]

Extends to
Provincial &
C. Courts.

225. The Court to which a decree is so sent shall cause such copies and certificate to be filed, without any further proof of the decree or order for execution, or of the copies thereof, or of the jurisdiction of the Court which passed it, unless the former Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

Ditto.

226. When such copies are so filed, the decree or order may, if the Court to which it is sent be the District Court, be executed by such Court or by any subordinate Court which it directs to execute the same.

Ditto.

227. If the Court to which the decree is sent for execution be a High Court, the decree shall be executed by such Court in the same manner as if it had been made by such Court in the exercise of its ordinary original civil jurisdiction.

Ditto.

228. The Court executing a decree sent to it under this chapter shall have the same powers in executing such decree as if it have been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its orders in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

WHETHER a decree for rent, under Act X. of 1859, made in one district, can be transferred to another for execution, is a question which the High Court can decide in the exercise of its "superintendence over all Courts subject to its appellate jurisdiction," under 24 and 25 Vic., c. 104, s. 15. Decrees for rent made by the Collector under s. 23 of Act X. of 1859 can be executed by a Civil Court to which they may be transferred under the sections of the Code of Civil Procedure relating to "the execution of a decree out of the jurisdiction of the Court by which it was passed."—*Nalmoni Singh Deo v. Tarangth Mukerjee*, I. L. R., 9 Cal. 295. [May 18, 1882.]

THE powers which the foreign Court has, under s. 228 of the Civil Procedure Code, are confined to the execution of the decree, and the Court cannot question the propriety or correctness of the order directing execution, nor can it, with reference to s. 239 of the Code, stay execution except temporarily. *Held*, therefore, where the drawers of a hundi, against whom the indorsee from the payee had obtained a decree on the hundi, objected in the Court to which the decree had been transmitted for execution that execution should not be allowed, because the payee had paid the amount of the hundi to the decree-holder, after the decree had been passed, and such Court refused to entertain the objection, that the order of the lower Appellate Court directing that the parties should be allowed to produce evidence in regard to the alleged payment, and that, should the Court of first instance find that the decree-holder had received satisfaction to the full amount of the decree, the judgment-debtors should be absolved from all liability under the decree, could not be maintained.—*Ram Lal v. Radhey Lal*, I. L. R., 7 All. 330. [Jan. 7, 1885.]

A DECREE was passed on the 20th February 1878 by the Munsif of M. In November 1878, it was, in accordance with the provisions of s. 223 of the Civil Procedure Code, transferred to the Munsif of J. On the 21st January 1879, an application for execution of the decree was made to the Munsif of J, who thereupon issued an order for the attachment of some immoveable property belonging to the judgment-debtor, and also for the

attachment of three decrees standing in his Court in favour of the judgment-debtor against other persons. On the 18th March 1882, the decree-holder applied to the Munsif of J to execute one of these decrees in his behalf, and he further asked that whatever might be realized in such execution should go to the account of the decree which had been transferred and which was being executed. *Held* that the application of the 18th March 1882 was perfectly legal, and such a proceeding as could keep alive the decree of the 20th February 1878, and that a subsequent application for execution, dated the 12th April 1883, was therefore not barred by limitation. An application to execute an attached decree is a "step in aid of execution" of the original decree, within the meaning of art. 179, sch. 2, of the Limitation Act, inasmuch as its object is to obtain money in order to pay off the judgment-debtor.—*Lachman v. Thoudi Ram*, I. L. R., 7 All. 382. [Feb. 25, 1885.]

229. A decree of any Court established by the authority of the Governor-General in Council in the territories of any Foreign Prince or State, which cannot be executed within the jurisdiction of the Court by which it was made, may be executed in manner herein provided within the jurisdiction of any Court in British India.

Decrees of Courts established by Government of India in Native States.

Extending to Provincial S. C. Courts.

B.—Of Application for Execution.

230. When the holder of a decree desires to enforce it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court, then to such Court or to the proper officer thereof.

Ditto.

The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor.

Where an application to execute a decree for the payment of money or delivery of other property has been made under this section and granted, no subsequent application to execute the same decree shall be granted after the expiration of twelve years from any of the following dates (namely) :—

(a) the date of the decree sought to be enforced or of the decree (if any) on appeal affirming the same, or

(b) where the decree or any subsequent order directs any payment of money, or the delivery of any property, to be made at a certain date—the date of the default in making the payment or delivering the property in respect of which the applicant seeks to enforce the decree.

Nothing in this section shall prevent the Court from granting an application for execution of a decree after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application.

Notwithstanding anything herein contained, proceeding may be taken to enforce any decree within three years after the passing of this Code, unless when the period prescribed for taking such proceedings by the law in force immediately before the passing of this Code shall have expired before the completion of the said three years.

AN application, under Act VIII. of 1859, for execution of a decree, was rejected by the Judge on the ground that the judgment-creditor had withdrawn from the former application. This order was reversed on appeal, and the case was sent back for disposal on its merits. The Judge then held that Act X. of 1877, which had just come into force, applied, and, on the ground that the decree-holder had failed to get execution upon his former application, dismissed the petition. The Judge referred the case to the High Court upon the question whether he was, under the circumstances, at liberty to grant the application. *Held* that he was. The application should have been dealt with under the

law which was in force at the time execution was sought. The effect of the provisions of Act X. of 1877, s. 230, considered.—Byraddi Subbareddi v. Dasappa Ráu, I. L. R., 1 Mad. 403. [Oct. 2, 1878.]

THE words, "the last preceding application," in Act X. of 1877, s. 230, cl. 3, mean an application under that section, and not an application under Act VIII. of 1859.—Ram Kishen v. Sedhai, I. L. R., 2 All. 275. [April 21, 1879.]

THE concluding clause of the same section refers to the question of limitation, and not that of due diligence—Sohan Lal v. Karim Bakhsh, I. L. R., 2 All. 281. [April 22, 1879.]

THE transferee of a decree applied, while an application by the original holder of such decree to execute it was pending, to be allowed to execute it. The Court, in accordance with Act X. of 1877, s. 232, directed notice of the transferee's application to be given to the transferor and the judgment-debtor. The transferee failed to pay the court-fee leviable for the issue of such notice, and the Court dismissed his application. The transferee subsequently made a second application to be allowed to execute the decree. *Held* that such application could not be rejected, with reference to s. 230, on the ground that due diligence had not been used on the former application to procure complete satisfaction of the decree, because such application had not been granted, and, therefore, the question whether "on the last preceding application" due diligence was used to procure such satisfaction did not arise.—Sadik Ali Khan v. Muhammad Husain Khan, I. L. R., 2 All. 384. [June 4, 1879.]

No process can legally issue upon an application for the execution of a decree already barred by limitation, nor can an application made under such circumstances be a valid application, or one which, under the Act, would give the execution-creditor a fresh period of limitation. Unless it can be shown that such was the express intention of the Legislature, none of the provisions of the present Limitation Act (XV. of 1877) can be made applicable to any matter which, at the time when such Limitation Act came into force, had already become barred by the operation of the prior Limitation Act.—Shumbhoonath Shaha v. Guruchurn Lahiri, I. L. R., 5 Cal. 894. [April 29, 1880.]

ON the 1st June 1880, several decree-holders applied to the subordinate Civil Court of Pinner for execution of their decree. They had taken out execution several times previously—the date of their last preceding application being 1st June 1877. The Subordinate Judge was of opinion that the applications were barred under the last clause of s. 230 of the Civil Procedure Code (Act X. of 1877). On his referring the cases to the High Court, *held* that the applications were not barred, inasmuch as the previous applications for execution had not been made under s. 230 of Act X. of 1877, that Act not being then in force.—Anandráv Chimuji Avati v. Thakarchand, I. L. R., 5 Bom. 245. [Sep. 7, 1880.]

WHERE an application to execute a decree was made under s. 230 of the Code of Civil Procedure before the Amendment Act (XII. of 1879) came into force, but was not disposed of until after s. 230 was altered by that Act, *held* that the rule in *Wright v. Hale* (6 H. & N. 227) applied, and that the Act, as amended, was the law to be applied.—Pápa Sástriál v. Anuntaráma Sástriál, I. L. R., 3 Mad. 98. [Dec. 15, 1880.]

THE plaintiff obtained a decree in 1864. The first application for execution was made in September 1869 under s. 216 of the Civil Procedure Code (Act VIII. of 1859); and after notice to the defendant, as provided thereby, an order was made under that section for execution to issue. In September 1880, an application for execution was made under s. 230 of the Civil Procedure Code of 1877, which repealed Act VIII. of 1859. *Held* that the order after notice had the effect of reviving the decree within the meaning of art. 180, sch. 2, Act XV. of 1877, and therefore the decree was not barred by the law of limitation. An order for execution under the Code, made after notice to show cause, has, on the original side of the Court, the same effect as an award of execution in pursuance of a writ of *sciri facias* had under the procedure of the Supreme Court—i. e., it creates a revivor of the decree. The clause of s. 230 of Act X. of 1877, which prohibits a subsequent application for execution, only applies where the previous application has been made under that section, and not where such previous application has been made under Act VIII. of 1859.—Ashootosh Dutt v. Doorga Churn Chatterjee, I. L. R., 6 Cal. 504. [Dec. 20, 1880.]

UNDER the Civil Procedure Code (Act VIII. of 1859), an application to the Court to continue the attachment of immoveable property, but to stay the sale of it, *held* to be a proceeding to keep in force the decree.—Núkanna v. Ramsámi, I. L. R., 2 Mad. 218. [Jan. 21, 1881.]

IN execution of a decree passed more than twelve years before the date of the Civil Procedure Code (Act X. of 1877), certain judgment-creditors applied for the attachment and sale of certain specified property belonging to their judgment-debtor, previous to the date on which the three years allowed for such execution under s. 230 would have expired. Subsequently, after the three years had elapsed, they filed a fresh application, praying that certain other property of their judgment-debtor might be attached and sold in lieu of that specified in their former application, and that the latter might be released. *Held* that execution of the decree was barred by limitation. *Per* Prinsep, J.—Under s. 230 of the Civil Procedure Code, it was intended by the Legislature that a decree-holder, seeking to execute a decree passed more than twelve years before, should have one opportunity to execute that decree, and that, if he fails to satisfy it on that application, any further application becomes barred.—*Sreenath Goocho v. Yusoo Khan*, 1 L. R., 7 Cal. 556. [July 7, 1881.]

ON the 3rd June 1879, an application was made for execution of a decree passed in 1836, and upon that application certain property was attached. On the 23rd October following, the proceedings were struck off, an order, however, being made at the same time that the attachment should continue. On the 31st December 1880, the decree-holder applied that the property under attachment should be sold. The preceding application for execution previous to that of 3rd June 1879 was made on the 8th August 1877. It was objected that the proceedings upon the applications of the 31st December 1880, and 3rd June 1879, were barred under s. 230 of the Code of Civil Procedure. *Held* that these proceedings were not barred, inasmuch as the previous application had not been made under s. 230 of the Code. *Anandray Chimuji Avati v. Thakurchand* (1 L. R., 5 Bom. 245) followed. *Held* also that the application of 3rd December 1880 could not be treated as a fresh application for execution within the meaning of the 3rd paragraph of the section referred to.—*Pannul Huq v. Kishen Mun Dabee*, 9 C. L. R. 297. [July 8, 1881.]

AN application for execution of a decree, which was more than twelve years old, having been made on the 4th August 1880, under s. 230 of the Code of Civil Procedure, an order was made for the attachment of the moveable property of the judgment-debtor. No moveable property having been found, the Court was asked to attach his immoveable property, but, refusing to do so, struck off the proceedings. The application for execution having been renewed on the 13th September 1880, it was *held* that the former application for execution must be treated as having been granted within the meaning of s. 230 of the Code, and, consequently, that the further application was barred under that section, the decree being more than 12 years old.—*Afrannessa Chowdhurani v. Sharafutullah*, 9 C. L. R., 321. [Aug. 1, 1881.]

THE plaintiffs obtained a decree of the High Court of Bombay against the defendant on the 22nd February 1867. The defendant, after the passing of the decree against him, resided in Ahmedabad. In July, plaintiff assigned his decree to L, who in 1876 assigned it to M. From time to time M obtained orders for the execution of the said decree, but was always unable to proceed to execution. The last order for execution made by the High Court was on the 4th February 1879. In April 1879, the decree was transmitted to the Court at Ahmedabad for execution, and that Court, in September 1879, issued a warrant of arrest against the defendant, against the order for which the defendant appealed. The said order was confirmed by the High Court on 10th February 1880. In April 1881, the defendant was in Bombay, and M, the decree-holder, obtained a summons calling on defendant to show cause why the decree should not be executed against him. On 3rd May the summons was made absolute. The defendant appealed, and contended that the application for execution was barred by limitation under s. 230 of the Civil Procedure Code (Act X. of 1877), which was to be read with cl. 180 of sch. 2 of the Limitation Act (XV. of 1877). *Held* that the application was not barred. Cl. 180 of the second schedule of the Limitation Act (XV. of 1877) was intended to be independent of s. 230 of the Civil Procedure Code, and not to be in any way controlled by it. S. 230 does not apply to decrees made by the High Court.—*Mayabhai Prembhai v. Tribhuvandas Jagjivandas*, 1 L. R., 6 Bom. 258. [Aug. 6, 1881.]

THE date referred to in the last paragraph of s. 230 of the Civil Procedure Code (Act X. of 1877) as the date of "the passing of" that Act held to be the 30th March 1877, the date when that Act received the assent of the Governor-General, and not the 1st October 1877, the date of the coming into force of that Act.—*Damodardas Haridas v. Uttamchand Saviachand*, 1 L. R., 7 Bom. 214. [Aug. 15, 1881.]

UNDER s. 230 of Act X. of 1877, an application for execution is said to be 'granted,' when it is made regularly and formally. The expression 'granted' is equivalent to the expression 'admitted' as used in s. 245. Where, therefore, an application for execution

under s. 230 of Act X. of 1877 is not 'granted,' a subsequent regular and formal application under the same section may be allowed if made within time.—*Dewan Ali v. Soroshibala Dabee*, I. L. R., 8 Cal. 297. [Nov. 2, 1881.]

THE parties to a decree presented a petition to the Court executing the decree, stating that it had been agreed between them that the amount of the decree should be paid by ten monthly instalments of Rs. 500 each. The Court made an order directing that such petition should be filed. Held that this order did not amount to one directing payment of money to be made at a certain date, which would give a fresh period of limitation under s. 230 (b) of the Civil Procedure Code.—*Bal Chand v. Raghunath Das*, I. L. R., All. 155. [Dec. 10, 1881.]

PER INNES, J.—The right to execute decrees having been curtailed by s. 230 of the Code of Civil Procedure, 1877, the provisions of the Limitation Act should be construed as far as possible so as to prevent the defeat of *bona fide* endeavours to secure the fruits of a decree once obtained.—*Kunhi Mannan v. Seshagiri Bhakthan*, I. L. R., 5 Mad. 141. [Mar. 6, 1882.]

WHERE an application to execute a decree of 1862 was made under s. 230 of the Code of Civil Procedure, 1877, on the 14th of December 1877, and a notice was issued to the judgment-debtor under s. 218, but no further steps were taken, held that a subsequent application made within three years from that date was not affected by the twelve years' rule, as the last preceding application had not been granted within the meaning of s. 230.—*Chengaya v. Appasami*, I. L. R., 6 Mad. 172. [Aug. 4, 1882.]

AFTER a sale of land in execution of a decree, and before its confirmation, the judgment-debtor cannot object to the validity of the sale on the ground that the execution of the decree is barred by the provisions of s. 230 of the Code of Civil Procedure, 1877.—*Gangathara v. Rathakai*, I. L. R., 6 Mad. 237. [Aug. 24, 1882.]

AN order under s. 230 of Act X. of 1877 by a Court executing a decree refusing an application to execute it at the same time against the person and property of the judgment-debtor, being a "decree" under s. 2 of the Act, an appeal lies against such order, and the Appellate Court is bound to consider whether the lower Court has properly exercised the discretion vested in it by s. 230 of that Act.—*Chena Poinaji v. Ghelabhaji Narandas*, I. L. R., 7 Bom. 301. [Jan. 29, 1883.]

A JUDGMENT-DEBTOR, who, though able to pay his judgment-debt, dishonestly evades payment for more than twelve years by eluding service of warrants and making applications to the Court (which had the effect for the time of staying execution), is guilty of fraud within the meaning of s. 230 of the Code of Civil Procedure.—*Annammalai v. Rangasami*, I. L. R., 6 Mad. 365. [April 10, 1883.]

THE holder of a decree applied for execution under s. 230 of Act X. of 1877, and the application was granted. Within three years after the passing of Act XIV. of 1882, by which Act X. of 1877 was repealed, he applied, for the first time, under s. 230 of the former Act, for execution of the decree. At the time this application was made more than twelve years had elapsed from the date of the decree. Held by Straight, Brodhurst, and Tyrrell, JJ., that the application might be granted, it being the first made under s. 230 of Act XIV. of 1882, and the first made after the expiration of twelve years from the date of the decree, and not being barred by the last paragraph of s. 230 of that Act, read in conjunction with the third paragraph of s. 230 of Act X. of 1877, the "law in force" mentioned in the last paragraph of s. 230 of Act XIV. of 1882 referring to the law of limitation in force at the time the Act was passed, and not to the third paragraph of s. 230 of Act X. of 1877. Held by Stuart, C.J., and Oldfield, J., that the application should not be granted, the effect of the last paragraph of s. 230 of Act XIV. of 1882 being to bar any proceedings to enforce a decree under that Act which would have been barred under s. 230 of Act X. of 1877, if taken thereunder, on the ground that the period of twelve years had elapsed from the dates specified in that section.—*Musharruf Begum v. Ghalib Ali*, I. L. R., 6 All. 189. [Jan. 29, 1884.]

A DECREE was obtained on the 10th July 1868, and applications to execute it were made in June 1862 and January 1866. The last application prior to the coming into operation of the Civil Procedure Code of 1877 was on the 10th January 1876. This proceeding was struck off. The decree-holder, on the 13th June 1879, again applied for execution: the decree was transferred to S for execution, where, on objection that it was more than twelve years old, and therefore barred by s. 230 of Act X. of 1877, the execution-proceedings were again struck off on the 17th January 1880. This order was appealed against, and eventually, on the 25th April 1881, the application was re-admitted. In June 1881, an application was made to the S Court for transfer of the case for execution to D, which

was granted, and the case transferred; but no steps having been taken by the decree-holder in the D Court, it was struck off by that Court on the 19th August 1881. On the 4th March 1882 (the judgment-debtor having died meanwhile) an application was made to the D Court to restore the proceedings for execution against his representative. Notices were issued, and the 2nd June was eventually fixed for the hearing. On that day no one was present on behalf of the decree-holder (whose pleader had died in the meantime), and the case was again struck off. On the 11th July 1882, application was made to restore the proceedings, notices were issued, and a day fixed for hearing; and after numerous adjournments the objections of the judgment-debtor were overruled on the 5th March 1883, and execution of the decree granted. On appeal the Judge found that the execution-proceedings had been continuous throughout, and that there had been no unreasonable delay in the prosecution of the execution-proceedings. *Held* that execution of the decree was not barred by s. 230 of the Code of Civil Procedure. The rights of the parties to execution-proceedings are not affected in any way by the case being "struck off" by the Court, there being no provision in the Civil Procedure Code for such a course. *Baroda Soondari Dabia v. Fergusson* (11 C. L. R. 17) followed. The only proper mode of dealing with a case, whether a regular suit or a miscellaneous proceeding, when the parties do not appear, is to dismiss it. A case so dismissed can be restored on application under s. 108, which is by s. 647 applicable as well to execution-proceedings as to suits and appeals.—*Biswa Sonan Chundër Gossyamy v. Binanda Chunder Dibingar Adhikar Gossyamy*, I. L. R., 10 Cal. 416. [Feb. 14, 1884.]

S. 230 of the Code of Civil Procedure, 1882, does not affect the period of limitation prescribed by art. 180 of sch. 2 of the Indian Limitation Act, 1877.—*Ganapathi v. Balasundara*, I. L. R., 7 Mad. 540. [Mar. 14, 1884.]

WHERE an application was made under s. 230 of the Civil Procedure Code, 1877, as amended by Act XII. of 1879, for execution of a decree more than twelve years old, and the application was granted, *held* that a subsequent application for execution of the decree, under s. 230 of the Civil Procedure Code, 1882, should have been refused, since the decree had been once allowed the benefit of the three years' grace under the last paragraph of s. 230 of the Code of 1877, and then became dead or unexecutable. *Held* that there is nothing in the Code of 1882 to justify the conclusion that it was intended to revive decrees which had become dead before it became law, and that here the decree-holder's right having already become dead before the enactment of the present Code, the passing of that Code could not bring that right into existence again. *Musharrif Begam Ali v. Ghalib Ali* (I. L. R., 6 All. 189) distinguished.—*Bhawani Das v. Daulat Ram*, I. L. R., 6 All. 388. [May 22, 1884.]

A DECREE of a District Court dated 5th October 1863, declared the plaintiff to be a hereditary deputy *vatandâr* of a certain *deshpânde ratan* vested in the ancestors of the defendant as hereditary *vatandârs*, and that the plaintiff, as such deputy, was entitled to receive a certain sum annually out of the income of the *vatan*. The decree did not explicitly deal with the claim to future payments then set up by the plaintiff as hereditary deputy *vatandâr*. The plaintiff received moneys from time to time under the decree until 1875, but he neglected to have himself registered as a representative *vatandâr* under Bombay Act III. of 1874, s. 56. In 1875 he made a claim for certain arrears of the allowance which he alleged to be due under the decree, and he attached certain moneys out of the income of the defendant's *vatan*. The Collector issued a certificate under s. 10 of the *Vatandârs' Act* (III. of 1874) for the removal of the attachment, and the attachment was accordingly removed by the Subordinate Judge. The plaintiff appealed from the order of removal, but the Appellate Court confirmed that order. On second appeal to the High Court, it was held on 23rd June 1879 that the lower Courts were right in raising the attachment; that the Civil Courts had no jurisdiction to register the plaintiff as a representative *vatandâr*, and that the Collector was the proper authority to be referred to. Thereupon the plaintiff applied to the Collector to cancel the certificate which had removed the attachment, and to register him as a representative *vatandâr*. The Collector rejected the plaintiff's application on 31st March 1881. In 1881 the plaintiff presented a fresh *dakhlat* to attach the same *vatan* property in virtue of the said decree of 1863, but the application was rejected as *res judicata* by both the lower Courts. They held that the certificate of the Collector, which remained uncanceled, operated as a bar. On second appeal to the High Court, *held*, reversing the order of the lower Courts, that the decree was one capable of execution. *Held*, as regards the Collector's certificate, that under s. 10 of the *Vatandârs' Act* (Bombay) III. of 1874 the certificate was exhausted in operating on the execution which it stopped, and that the lower Court ought to have dealt with the case apart from that certificate.—*Gopal Hanmant Deshka v. Kondo Kâshinâth*, I. L. R., 9 Bom. 328. [Dec. 16, 1884.]

A OBTAINED a decree against B in June 1879, and in execution thereof some time in 1879 attached certain moneys in Court which belonged to his judgment-debtor, and obtained an order for payment out to him. Before receiving payment A died, and the execution-proceedings were struck off on the 31st January 1880. On the 14th June 1880, and on the 22nd June 1881, the widow of A, who had taken out probate, applied to withdraw this money from Court, and on the 1st of April 1882 applied for a copy of the decree obtained by A, for the purposes of execution. At the time of these three applications the widow had not applied for substitution of her name on the record in the place of her deceased husband. On the 5th January 1884 the widow applied to have her name substituted on the record, and for execution. *Held* that the application was barred, as the previous applications were not, under the circumstances, steps in aid of execution.—*Gunga Pershad Bhoomick v. Dabi Sundari Dabea*, I. L. R., 11 Cal. 227. [Jan. 29, 1885.]

In 1868 a decree was obtained for Rs. 1,100, which provided that the amount should be paid in instalments, the first instalment being Rs. 200, to be paid at the end of the first year, and that the other instalments should be Rs. 100 at the end of each subsequent year, and that in the event of failure to carry this out, and 2½ months after the falling due of the instalment, the whole amount should be exigible in a lump sum with interest at 8 annas per cent. per mensem. In 1877, the decree-holder applied for execution of the decree, asserting that Rs. 600 had been paid up to that time by five instalments, one of Rs. 200, and four of Rs. 100 each, and that default had been made in payment of the fifth instalment of Rs. 100, and he asked to recover the whole amount due on the decree. No order was passed on this application, and eventually the case was struck off. In 1880, the decree-holder again applied for execution of the decree, upon the same grounds as those upon which the previous application was based. Notice was issued and served, and a warrant issued for the arrest of the judgment-debtor, but eventually the case was struck off. In 1883, the decree-holder, on the same grounds, made another application for execution. It was contended by the judgment-debtor that execution was barred by s. 230 of the Civil Procedure Code, inasmuch as no instalments had been paid, and even if they had been paid, they could not be recognized, not having been certified. *Held* that the proper time from which to reckon the limitation of twelve years was the fifth year from the date of the bond, the whole claim from the beginning and the order passed in 1880 having gone upon that basis; that the Court could not go behind that order; and that consequently the decree-holder was within time, and might take out execution.—*Kanji Mal v. Kanhia Lal*, I. L. R., 7 All. 373. [Feb. 19, 1885.]

THE judgment-debtor, on seeing the Court's bailiff approach his house to attach his property, left the verandah, went inside the house, chained the door, and refused to open it when called on to do so by the bailiff. *Held* that the conduct of the judgment-debtor amounted to a prevention by fraud of the execution of the decree within the meaning of s. 230 of the Civil Procedure Code (Act XIV. of 1882).—*Bhāga Jetha v. Malek Bawā-sāheb*, I. L. R., 9 Bom. 318. [Feb. 23, 1885.]

WHERE a decree-holder died without taking out execution of his decree, and, two days after his death, his pleader made an application for execution on his behalf, this being the first application of the kind, *held* that, inasmuch as the authority of a pleader ceases at the moment of his client's death, the application was invalid, and was not such an application or step in aid of execution of the decree as could save a subsequent application for execution by the decree-holder's heirs from being barred by limitation.—*Kallu v. Muhammad Abdul Ghani*, I. L. R., 7 All. 561. [Mar. 16, 1885.]

R, in a suit against S and other persons, obtained a decree on the 24th December 1878, S being exempted from the decree, and being awarded costs against the plaintiff. In executing his decree, R, on the 16th June 1880, sought to set-off the costs awarded to S against the amount due to himself. On the 6th August 1880, S preferred objections to this course. On the 19th July 1883, S applied for execution of his decree for costs. *Held* that the application was barred by limitation, inasmuch as art. 179 (4) of the Limitation Act requires that the decree-holder should make a direct and independent application for execution on his own account, and it was not sufficient to satisfy the requirements of the law to offer objections under the circumstances under which they were offered in the present case.—*Shib Lal v. Radha Kishen*, I. L. R., 7 All. 898. [July 18, 1885.]

ON 15th February 1872, the plaintiff obtained against the defendant a decree for possession upon his mortgage, and, in attempting to take possession, was obstructed by Naro, another mortgagee of the defendant, whereupon the plaintiff applied for removal of the obstruction, but his application was rejected, on the ground that Naro was in possession as mortgagee, and that the plaintiff was not entitled to possession until Naro's mortgage was redeemed. The plaintiff did not apply for execution any further. In 1884 the defendant paid off Naro's mortgage, and on 27th August 1885 the plaintiff presented

an application for execution of his decree of 1872. On reference to the High Court, *held* that the execution of the decree was barred, no application for execution having been made since 1873. The previous application for execution not having been made under s. 230 of the Civil Procedure Code (Act XV. of 1859), the general law of limitation, as laid down in art. 179 of Act XV. of 1877, governed the case.—*Annaji Apaji v. Ramji Jivaji*, I. L. R., 10 Bom. 348. [Feb. 4, 1886.]

UNDER s. 230 of the Civil Procedure Code, after a decree is twelve years old, there is a prohibition against its being executed more than once, i.e., an application for execution should not be granted if a previous application has been allowed under the provisions of that section. The mere filing of a petition with the result that the application contained in it is subsequently struck off, is not "granting" an application within the meaning of s. 230 of the Code, and ss. 245, 248, and 249, show that there is a broad distinction between admitting an application for the purpose of issuing notice to the other side and hearing the objections that may be urged, and a decision of the Court as provided in s. 249. In 1865 a decree was passed for a sum of money payable by yearly instalments for a period of sixteen years. Down to March 1877 various amounts were paid on account of the decree. In that month an application was made for execution of the decree, the result being an arrangement for liquidation of the amount then due, which was confirmed by the Court. A second application for execution was made on the 9th March 1881, the decree then being more than twelve years old. All that was done with reference to this application was that notice to appear was issued to the judgment-debtor's representatives, and subsequently a petition was filed notifying that an arrangement had been effected, under which a certain sum had been paid by one of the said representatives in satisfaction of the claim against him, and that the other had agreed to pay the balance by yearly instalments. Upon this, the application for execution was struck off. On the 5th March 1883, another application for execution was made, notice to appear was issued, and after this notice a petition was put in intimating that an arrangement had been come to, and praying that execution might be postponed, whereupon the application was struck off. Again, on the 31st March 1884, the decree-holder applied once more for execution of the decree. *Held* that neither the previous application of the 9th March 1881, nor that of the 5th March 1883, could properly be said to have been "granted" within the meaning of s. 230 of the Civil Procedure Code, and under these circumstances, the decree, though twelve years old and upwards, was not barred by that section, and the application for execution should be allowed.—*Paraga Kuar v. Bhagwan Din*, I. L. R., 8 All. 301. [May 5, 1886.]

THE holder of a decree, bearing date the 15th June 1872, applied for execution thereof on the 9th February 1885, the previous application being dated the 27th November 1883. *Held* that the application for execution was not barred by s. 230 of the Civil Procedure Code. *Musharraf Begam v. Ghalib Ali* (I. L. R., 6 All. 189) followed. *Goluck Chandra Mytee v. Harapriah Debi* (I. L. R., 12 Cal. 559), *Bhawani Das v. Jaulat Ram* (I. L. R., 6 All. 388), and *Sreenath Goocho v. Yusoo Khan* (I. L. R., 7 All. 556), referred to. *Tufail Ahmad v. Sadhu Saran Singh* (Weekly Notes, 1885, p. 193), discussed and dissented from by Mahmood, J. *Per* Mahmood, J.—The rule of construction being that a limited meaning can only be given to general words in a statute where the statute itself justifies such limitation, the words "any decree" in the proviso to s. 230 of the Civil Procedure Code must not be construed as confined to such decrees as would be barred on the date of the Code coming into force, inasmuch as no reason for so restricting the meaning of those words can be found in the Code or is suggested by the legislative policy upon which clauses such as the proviso in question are based. This policy is to prevent a sudden disturbance of existing rights in consequence of new legislation; but it is beyond its object and scope to revive rights or remedies which have already expired before the new Act comes into operation; and although the Legislature may revive such rights or remedies, it can only do so by express words to that effect.—*Jokhu Ram v. Ram Din*, I. L. R., 8 All. 419. [May 14, 1886.]

A DECREE, passed in April 1872, was kept alive by various applications for execution up to 1883. In February and December of that year two such applications were made, but the proceedings on both occasions terminated in the applications being struck off without any money being realized under the decree. In November 1884, the decree-holder again applied for execution, the application being the first made after the decree had become twelve years old, and being made within three years from the passing of the Civil Procedure Code, 1882. *Held* that the application must be entertained in accordance with the ruling of the Full Bench in *Musharraf Begam v. Ghalib Ali* (I. L. R., 6 All. 189). *Tufail Ahmad v. Sadhu Saran Singh* (Weekly Notes, 1885, p. 193) dissented from. *Jokhu Ram v. Ram Din* (I. L. R., 8 All. 419) referred to. *Per* Mahmood, J., that the previous execution-proceedings, initiated by the applications of February and December

1883, having terminated in those applications being struck off, it could not be said that the applications were 'granted' within the meaning of s. 230 of the Civil Procedure Code. *Paraga Kuar v. Bhagwan Din* (I. L. R., 8 All. 301) referred to.—*Ramadhar v. Ram Dayal*, I. L. R., 8 All. 536. [July 1, 1886.]

IN s. 230 of the Code of Civil Procedure, 1882, the words "law in force" include the Civil Procedure Code, 1877, as well as the Limitation Act then in force. *Held*, therefore, where an application for execution of a decree of 1872 had been made and granted in January 1882, and under s. 230 of the Code of Civil Procedure, 1877, further execution became barred, before the date on which the Civil Procedure Code, 1882, came into force, that no application within three years from such date could be granted under s. 230 of that Code.—*Kollu Shektati v. Manjaya*, I. L. R., 9 Mad. 454. [July 30, 1886.]

Extending to
Provincial S.
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231. If a decree has been passed jointly in favour of more persons

Application by joint de- than one, any one or more of such persons, or his
cree-holder. or their representatives, may apply for the exe-
cution of the whole decree for the benefit of them all, or where any of them
has died, for the benefit of the survivors and the representative in interest
of the deceased.

If the Court sees sufficient cause for allowing the decree to be executed on an application so made, it shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

A JOINT-DECREE was passed in favour of A and B, and A subsequently applied for execution alone, alleging that B would not join with him in the application. The judgment-debtor stated, and B admitted, that more than half of the decretal money had been paid to the latter (out of Court), but the Court disbelieved the statement, and ordered execution to issue for the full amount of the decree. *Held* that the Court should, under s. 207 of Act VIII. of 1859, have allowed execution for half the amount of the decree only.—*Brojeswari Chowdhraee v. Tripoora Soundereo Debi*, 3 C. L. R. 513. [June 20, 1878.]

THE representative of one of several decree-holders conveyed his interest in the decree to A. Some time afterwards A filed a petition in Court, stating that the decree had been satisfied out of Court, and the case was thereupon struck out as far as he was concerned. Subsequently the other decree-holders applied for execution of their share of the decree, but it was objected that the decree had already been satisfied by payment to A. *Held* that the other decree-holders were entitled to proceed with execution for the amount of their share, a joint decree-holder having no power to give a discharge out of Court to a judgement-debtor for more than his own share in the decree.—*Musammatt Bibee Budhun v. Musammatt Hafezah and others*, 4 C. L. R. 70. [Mar. 24, 1879.]

THE circumstance that the petition of one of several decree-holders in applying for execution requires amendment because of the list of property being incomplete, is no ground for declaring such application to be superseded by a later application made before the completion of the necessary amendment by another co-decree-holder for execution. Two executions of the same decree, so far as attachment of different properties of the judgment-debtor is concerned, may proceed simultaneously, though ordinarily the sales in execution should not take place simultaneously.—*Sheikh Ahmed Chowdhry v. Shahzada Khatoon*, 7 C. L. R. 537. [Sep. 10, 1880.]

ALTHOUGH the Civil Procedure Code does not allow one of several decree-holders to apply for the partial execution of a joint-decree, yet an application by one of such decree-holders for execution of the decree in respect of so much of the relief granted to all as he considers appertains to him individually may keep in force the decree as being an application according to law.—*Ponnampilath Parapravan Kuthath Haji v. Ponnampilath Parapravan Bavotti Haji*, I. L. R., 3 Mad. 79. [Oct. 11, 1880.]

A DECREE passed jointly in favour of more persons than one can only be legally executed as a whole for the benefit of all the decree-holders, and not partially to the extent of the interest of each individual decree-holder. *Held*, therefore, where one of two persons in whose favour a decree for money had been passed jointly applied, on the 27th April 1880, for execution of a moiety of such decree, and the other of such persons made a similar application on the 30th April 1880, that such applications, not being in accordance with law, were not sufficient to keep the decree in force. Also that the illegality of such applications could not be cured by a subsequent amended application for the execution of the decree as a whole preferred after the period of limitation had expired.—*Collector of Shahjahanpur v. Surjan Singh*, I. L. R., 4 All. 72. [July 13, 1891.]

A JOINT-DECREE cannot be executed by one of the several joint holders in respect only of his share of the decree. *Ram Autar v. Ajndlia Singh* (I. L. R., 1 All. 231), *The Collector of Shahjahanpur v. Surjan Singh* (I. L. R., 4 All. 72), and *Haro Sanker Sandyal v. Tara Chandra Bhuttacharjee* (3 B. L. R. 114), followed. When, by operation of law, one of several joint judgment debtors acquires the position of the decree-holder in respect of the whole judgment-debt, the effect is to extinguish the liability of the other judgment-debtors, and the decree cannot be executed against them. But when one of them so acquires only a partial interest in the decree, the effect is not to extinguish the entire judgment-debt, but so much only of it as such judgment-debtor has so acquired. *Wise v. Abdool Ali* (7 W. R. 136), *Pozose v. Fakarooddeen Mahomed Absan* (25 W. R. 343), *Degumbures Dabee v. Soroop Chunder Hazra* (9 W. R. 230), and *Khoshallee v. Nund Lall* (N. W. P. H. C. R., 1874, p. 1), referred to. Held, therefore, where one of several joint decree-holders applied for execution in respect of his own share only, and the joint judgment-debtors under the decree had inherited the right therein of one of the joint decree-holders, that the application was contrary to law; that so much of the judgment-debt as had devolved upon such persons had been extinguished; and that application should have been made for execution in respect of the entire unextinguished portion of the judgment-debt. *Brojeswari Chowdhuranc v. Tripoora Soonderee Debi* (3 C. L. R. 513) and *Musammatt Bibee Budhum v. Musammatt Hafezah* (4 C. L. R. 70) followed.—*Banarsi Das v. Maharani Kuar*, I. L. R., 5 All. 27. [July 4, 1882.]

ON an application for execution for the full amount due under a decree by some of several joint decree-holders, the judgment-debtor objected to execution being granted for the full amount of the decree on the ground that he had already paid off a large portion of the money due under the decree to B, one of the joint decree-holders. The payment was made out of Court, but B who claimed to be entitled to a 12½-anna share in the decree, certified the payment in the manner prescribed by s. 255 of the Civil Procedure Code (Act XIV. of 1882), and represented that his claim had been satisfied in full. The other joint decree-holders denied B's right to the 12½-anna share claimed by him, and refused to recognise the payment said to have been made to him. The lower Court disallowed the objection, and granted execution for the full amount of the decree. Held that, regard being had to the provisions of the General Clauses' Act (I. of 1869), the word "decree-holder" in s. 258 of Act XIV. of 1882 should be read in the plural, and looking at the provisions of s. 231 of the later Act the Court ought not to recognise payments made out of Court, unless made and certified for the benefit of all the joint decree-holders of any portion of the decree in excess of that to which the decree-holder so paid is undisputedly entitled. Held also that a judgment-debtor is entitled to credit for any sum paid bona fide to one of several joint decree-holders, and duly certified to the Court by the latter, and that the other joint decree-holders cannot execute the decree for more than their own share. Held further that in this case the lower Court was wrong in wholly ignoring the payment certified by the decree-holder B, and that it should have determined, first, whether the payment to B was a fraud on the other joint decree-holders; and, secondly, what amount the latter were entitled to have out of the whole decree, the latter being the main question between the applicants for execution and the judgment-debtor, and as such clearly within the scope of s. 214 of the Civil Procedure Code. *Ranee Nyna Koor v. Doolee Chund* (22 W. R. 77), *Brojeswari Chowdhuranc v. Tripoora Soonderee Debi* (3 C. L. R. 513), and *Mahima Chandra Roy v. Pyari Mohan Chowdry* (2 B. L. R. Ap. 43).—*Tarruck Chunder Bhuttacharjee v. Divendro Nath Sanyal*, I. L. R., 9 Cal. 331. [April 5, 1883.]

THE provisions of s. 231 of the Civil Procedure Code are not applicable to the case of joint decree-holders, the execution of whose decree is conditional on their joint performance of a particular act.—*Farzand Ali v. Abdullah*, I. L. R., 6 All. 69. [Aug. 21, 1883.]

232. If a decree be transferred by assignment in writing, or by operation of law, from the decree-holder to any other person, the transferee may apply for its execution to the Court which passed it; and, if that Court thinks fit, the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder :

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Provided as follows :—

(a) where the decree has been transferred by assignment, notice in written of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to such execution :

(b) where a decree for money against several persons has been transferred to one of them, it shall not be executed against the others.

To enable the heir of a deceased person to apply, under s. 208 of Act VIII. of 1859, for the execution of a decree held by such person, a certificate under Act XXVII. of 1860 is not indispensable.—*Karam Ali v. Halima*, I. L. R., 1 All. 686. [June 24, 1878.]

WHERE a decree was sent to a Court for execution, and was subsequently transferred by assignment, and the transferee applied for the execution of the decree to the Court to which the decree was sent for execution, *Held* that such application should be made, not to such Court, but to the Court which passed the decree.—*Kadir Bakhsh v. Alahi Bakhsh*, I. L. R., 2 All. 283. [April 23, 1879.]

THE transferee of a decree applied, while an application by the original holder of such decree to execute it was pending, to be allowed to execute it. The Court, in accordance with Act X. of 1877, s. 232, directed notice of the transferee's application to be given to the transferor and the judgment-debtor. The transferee failed to pay the court-fee leviable for the issue of such notice, and the Court dismissed his application. The transferee subsequently made a second application to be allowed to execute the decree. *Held* that such application could not be rejected, with reference to s. 230, on the ground that due diligence had not been used on the former application to procure complete satisfaction of the decree, because such application had not been granted, and therefore the question whether "on the last preceding application" due diligence was used to procure such satisfaction did not arise.—*Sadik Ali Khan v. Muhammad Husain Khan*, I. L. R., 2 All. 384. [June 4, 1879.]

THE transferee of a decree is not entitled to have execution as of right like the original decree-holder; if, however, the transfer be by assignment, and in writing, s. 232 of the Code of Civil Procedure (Act XIV. of 1882) enables the transferee to apply for, and the Court to proceed to, execution in the manner therein provided.—*Javermal Hirachand v. Umaji*, I. L. R., 9 Bom. 179. [Nov. 28, 1884.]

THE transferee of a decree for costs, associating with him the transferor, made an application under s. 232 of the Civil Procedure Code to be allowed to execute the decree. The application was opposed by the judgment-debtor, and was rejected, and the Court referred the transferee to a regular suit. After taking various proceedings ineffectually, he instituted a suit for the recovery of the sum to which he was entitled as costs under the decree transferred to him. *Held* that the plaintiff, as the holder of the decree by assignment, could only recover the amount under it by executing the decree, and not by a separate suit; but that he was entitled to have a decree declaring that the assignment to him of the decree-holder's rights under the decree was valid, and gave him a right to execute it, and that the Court's order under s. 232, which disallowed the execution, was an improper one, a suit for this relief being maintainable; for, there being no appeal from orders under s. 232, there would otherwise be no remedy, and that, looking at the plaint and the issues on which the parties were divided, and the fact that the Court which refused the plaintiff's application for execution referred him to a regular suit, this relief might properly be given in the present suit. *Per* Mahmood, J., that the suit was maintainable, inasmuch as the present plaintiff never having been accepted on the record as holder of the decree, the questions which were disposed of by the Court executing the decree, as between the plaintiff and the judgment-debtor, could not be regarded as questions within s. 244 of the Civil Procedure Code.—*Ram Bakhsh t. Panna Lal*, I. L. R., 7 All. 457. [Mar. 5, 1885.]

CERTAIN property was mortgaged by A to B. Subsequently, this property was purchased by C at a sale held in execution of a decree obtained by a third person against A. B then brought a suit on his mortgage-bond against A and C, and obtained a decree for the sale of the mortgaged properties, and also a personal decree against A; B assigned his rights under this decree to C, who applied for execution under s. 232 of the Code. A objected to execution issuing, relying on proviso b to s. 232. *Held* that proviso b to s. 232 applies only to decrees for money personally due by two or more persons; and that the decree obtained by B against A and C not being a personal decree against C (he having been made a defendant only by reason that he had purchased the mortgaged property subject to the mortgage-debt), C, as assignee of B, was entitled to take out execution.—*Lalla Bhagun Persad v. Holloway*, I. L. R., 11 Cal. 393. [Mar. 6, 1885.]

A DECREE for damages and costs having been obtained against P and C, A, to whom P was indebted, and was about to assign property as security, in order to prevent P being adjudicated an insolvent, and with a view to execute the decree against C if possible, purchased the decree. A applied, under s. 232 of the Code of Civil Procedure, for leave to execute the decree. This application was rejected by Kernan, J., on the ground that the

decree was certain to be executed against C, and not against P, under whose orders and for whose benefit C acted when he infringed the right of, and became liable in damages to, the plaintiff in the suit. *Held*, on appeal, that the benefit likely to be gained by P by this transaction was no sufficient ground for refusing leave to A to execute the decree.—*Agra Bank v. Cripps*, I. L. R., 8 Mad. 455. [April 27, 1885.]

THREE out of six decree-holders sold their share in the decree to A, who thereafter made an application to the Court under s. 232 of the Code of Civil Procedure. This application was dismissed on the ground that A's purchase was made *benami* for some of the judgment-debtors. In a subsequent suit brought by A and the persons who were said to be the real purchasers, it was contended that a separate suit was barred under the provisions of s. 244, cl. c, of the Code of Civil Procedure. *Held* that A was not a party to the suit in which the decree was passed, nor the representative of any such party, and that the suit was not barred.—*Halodhar Shaha v. Harogobind Das Koiburto*, I. L. R., 12 Cal. 105. [July 4, 1885.]

ON an application under s. 232 of the Civil Procedure Code by the purchaser of a decree to be allowed to execute it, two of the judgment-debtors objected that the purchase was *benami* for the other judgment-debtor, and that they had paid off the decree to the original decree-holder. The Munsif found both objections against them, and allowed the purchaser to execute the decree. *Held* that the question was one between the parties to the suit or their representatives relating to the execution, discharge, or satisfaction of the decree, and that the decision of that question was a decree under ss. 2 and 244 of the Code, and therefore appealable, and a second appeal lay therefrom to the High Court.—*Afzal v. Ram Kumar Bhudra*, I. L. R., 12 Cal. 610. [Mar. 5, 1886.]

A IN 1839 obtained a decree against B, a *sardár*, in the Court of the Agent for Sardárs. The decree was executed in the Agent's Court until B's death in 1868. B's status as a *sardár* under the exclusive jurisdiction of the Agent did not descend to his sons, and the decree was transferred to the Court of the First-class Subordinate Judge at Ahmednagar for execution. Various objections were taken to the execution of the decree by that Court, but none on the ground that the Agent's decree could not be executed by a mere transfer to an ordinary Civil Court. The case went up twice to the High Court, under whose orders the execution was for several years continued in favour of A's representatives against the estate of B's sons. In 1885 one of A's representatives assigned his interest under the decree to C and D. Thereupon the transferees, C and D, applied to the First-class Subordinate Judge at Ahmednagar to have their names substituted in the place of the transferor in the execution-proceedings. The Subordinate Judge rejected this application, on the ground that he could not recognise the transfer of the decree either under s. 372 or s. 232 of the Civil Procedure Code (Act XIV. of 1882). He also found that execution had been going on for several years contrary to the ruling in *Khusáldás v. Sakháram Rámchandra* (12 Bom. H. R. 212), which laid down that the Agent's decree could not be executed by a mere transfer to an ordinary Court—the remedy in such cases being by a suit on the decree. On this ground, also, he refused to recognise the transfer of the decree. *Held*, reversing the order of the lower Court, that the assignment of the decree-holder's rights to execution in this case was one approved by the law as contained in s. 232 of the Code of Civil Procedure (Act XIV. of 1882). The transferee of a decree gains by the transfer the rights of the transferor. *Held*, also, that though the execution-proceedings in this case had been for many years irregularly conducted by a mere transfer of the Agent's decree to an ordinary Civil Court, still as the Court which carried on the execution had jurisdiction to grant the same relief if a suit had been brought upon the decree, the irregularity, having been acquiesced in, did not vitiate the former proceedings in execution. Where jurisdiction over the subject-matter exists, requiring only to be invoked in the right way, the party who has invited or allowed the Court to exercise it in a wrong way cannot afterwards challenge the legality of the proceedings due to his own invitation or negligence. But if there is no jurisdiction over the subject-matter, the acquiescence of the parties concerned cannot create it. Where a decree is one of continuous operation, taking effect as each year furnishes proceeds for its satisfaction, it must be executed each year according to the law of procedure then in force.—*Vishnu Sakháram Nagarkar v. Krishnaráo Malhár*, I. L. R., 11. Bom. 153. [July 29, 1886.]

THE words of s. 28 of the Registration Act (III. of 1877), "some portion of the property" should not be read as meaning some *substantial* portion. *Shoo Dayal Mal v. Hari Ram* (I. L. R., 7 All. 590) dissented from. The holders of a decree for the sale of mortgaged property transferred the same to M by instruments which were registered at a place where a small portion only of the property was situate. Subsequently M transferred the decree to other persons, and the co-transferees applied, under s. 232 of the Civil Procedure Code, to have their names substituted for those of the original decree-holders. The

judgment-debtor opposed the application on the grounds that M's name had not been substituted for the names of the original decree-holders who had transferred to him, and that the transfers to M were inoperative, as the instruments of transfer had not been registered at the place where the substantial portion of the mortgaged property was situate in accordance with s. 28 of the Registration Act (III. of 1877). It appeared that no notice had been issued to M, under s. 232 of the Civil Procedure Code, that he was dead, and that his legal representatives had not been cited as required by law. The application was allowed by the Courts below. *Held* that the matter involved questions arising between the parties to the decree or their representatives, within the meaning of s. 244 (c) of the Code, and that the order allowing the application was therefore a decree within the definition of s. 2, and was appealable as such. *Held* that, even assuming that the judgment-debtor had a *locus standi* to raise the objection that notice had not been issued to the applicants' transferor, he had no possible interest in the question, and could not be prejudiced by the passing of the order; that it was not necessary to cite the representatives of the transferor; and that the order not being one upon which execution of the decree could issue, but merely for a transfer of names, the objection that the transferor had not been cited under s. 232 was not a substantial one. *Held* that the objection in reference to s. 28 of the Registration Act could only properly be raised between the transferor and the transferee, and not by the judgment-debtor, and moreover had no force. *Held* that it could not be said that where a decree has been assigned by one assignor to another, the substitution of his name on the record in lieu of that of the original decree-holder was a condition precedent to the assignor's passing title under the assignment.—*Gulzari Lal v. Daya Ram*, I. L. R., 9 All. 46. [Oct. 21, 1886.]

A HOLDER of a certificate of administration granted under s. 7 of Reg. VIII. of 1827 is a transferee by law of a decree obtained by the deceased within the meaning of s. 232 of the Civil Procedure Code (Act XIV. of 1859), and is competent to apply for execution of such a decree.—*Khauderav Rayajirav v. Ganesh Shastri*, I. L. R., 11 Bom. 368. [Jan. 27, 1887.]

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233. Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

Ditto.

If judgment-debtor dies before execution, application may be made against his representative.

234. If a judgment-debtor dies before the decree has been fully executed, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

Such representative shall be liable only to the extent of the property of the deceased which has come to his hands, and has not been duly disposed of; and for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion, or on the application of the decree-holder, compel the said representative to produce such accounts as it thinks fit.

WHERE an application is made and granted under s. 210, Act VIII. of 1859, and property is attached which is claimed by the heir as his self-acquired property, the Court should proceed under s. 233 without requiring any fresh application to be made under that section.—*Ram Chand Chuckerbutty v. Madhub Narain Roy*, I C. L. R. 359. [Dec. 6, 1877.]

A RIGHT of second appeal, where it existed prior to Act X. of 1877, now exists in the case of any proceedings in execution which were commenced prior to, and were still pending on, the 1st of October 1877. An order was made under s. 210 of Act VIII. of 1859, making the legal representatives of a deceased judgment-debtor parties to a suit in execution of a decree obtained against the deceased in his lifetime. Subsequently the decree-holder discovered that certain property which he claimed to be the property of the deceased was in the possession of a third person, C; and he applied to have C's name put upon the record, and to be allowed to execute the decree against him. *Held* that the Court had no power to put C's name on the record.—*Syud Nadir Hossain v. Bissen Chand Bussarat*, 3 C. L. R. 437. [June 24, 1878.]

A HINDU widow instituted a suit to recover possession of certain property belonging to her deceased husband, and that suit was dismissed with costs. The widow having died

before execution for the costs was taken out, the decree-holder sought to take out execution against the next heirs of the late widow's deceased husband. *Held* that the fact that the widow did not in her suit seek to recover any interest personal to herself, but that she contracted the judgment-debt in the effort to recover a portion of her husband's estate, to which, in its entirety, the next heirs of her late husband had succeeded, was sufficient to make the whole estate liable, and would entitle the decree-holder to satisfy his decree against "the legal representatives" of the late widow's husband, under s. 234 of Act X. of 1877. In a decree against a Hindu widow, it should be stated whether the decree is a personal decree, or one against her as representing her deceased husband. — *Ramkishore Chuckerbutty v. Kallykanto Chuckerbutty*, 1. L. R., 6 Cal. 479. [Dec. 3, 1880.]

As the entire interest in an impartible zamindari passes upon the death of the father to the son, there is nothing in the estate itself which can be attached as assets of a father under a decree against him, or which can be made available in execution of the decree against his son as his representative. Though a son is bound, under Hindu law, to pay his father's just debts from any property he may possess, yet, when he is made a party to a decree as representative of his deceased father for the purpose of executing it, his liability is limited to the amount of assets of the deceased which may have come to his hands and has not been duly disposed of. An appeal lies from an *ex-parte* order directing attachment in execution of a decree. — *Saizili Virapandia Chinnathambiar v. Alwar Ayyangar*, 1. L. R., 3 Mad. 42. [April 30, 1881.]

In a suit by the trustees to remove the defendant from the management of certain temples, a decree for mesne-profits was passed against the defendant, who was the karnavan of a Malabar tarwad. *Held* that the tarwad property in the hands of the deceased defendant's successor was not assets of the deceased in the hands of his successor liable to satisfy the decree under s. 234. The share of a deceased father in an undivided Hindu family passes by survivorship to the sons, and is not assets in their hands to satisfy a decree against the father under s. 234. — *Ravi Varam v. Koman*, 1. L. R., 5 Mad. 223. [Sep. 10, 1881.]

In an undivided Hindu family, although the interests of the sons in the ancestral estate are liable to satisfy the father's debts, the holder of a money-decree against the father who has not attached the ancestral estate before the death of the father cannot execute the decree against the ancestral property as assets in the hands of the representatives of the judgment-debtor under s. 234 of the Code of Civil Procedure, 1877. Zamindar of Sivagiri v. Alwar Ayyangar (1. L. R., 3 Mad. 42) followed. — *Karnataka Hanumantha v. Andukuri Hanumaya*, 1. L. R., 5 Mad. 232. [Mar. 7, 1882.]

A SUIT having been brought against the holder of an impartible zamindari upon a promissory note, a decree was passed by consent, whereby certain land was directed to be sold in the event of the debt not being paid in a certain way. After the death of the zamindar execution-proceedings were taken against his son to obtain a sale of the said land. *Held* that the decree could be executed against the son. — *Sivagiri Zamindar v. Tiruvengada*, 1. L. R., 7 Mad. 339. [Jan. 29, 1884.]

235. The application for the execution of a decree shall be in writing, verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain, in a tabular form, the following particulars (namely) :—

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- (a) the number of suit ;
- (b) the names of the parties ;
- (c) the date of the decree ;
- (d) whether any appeal has been preferred from the decree ;
- (e) whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree ;
- (f) whether any and what previous applications have been made for execution of the decree and with what result ;
- (g) the amount of the debt or compensation with the interest (if any) due upon the decree, or other relief granted thereby ;
- (h) the amount of costs (if any) awarded ;

- (i) the name of the person against whom the enforcement of the decree is sought ; and
- (j) the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, by the arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise as the nature of the relief sought may require.

IN execution of a decree passed more than twelve years before the date of the Civil Procedure Code (Act X. of 1877), certain judgment-creditors applied for the attachment and sale of certain specified property belonging to their judgment-debtor, previous to the date on which the three years allowed for such execution, under s. 230, would have expired. Subsequently, after the three years had elapsed, they filed a fresh application, praying that certain other property of their judgment-debtor might be attached and sold in lieu of that specified in their former application, and that the latter might be released. *Held* that execution of the decree was barred by limitation. *Per* Prinssep, J.—Under s. 230 of the Civil Procedure Code, it was intended by the Legislature that a decree-holder, seeking to execute a decree passed more than twelve years before, should have one opportunity to execute that decree, and that, if he fails to satisfy it on that application, any further application becomes barred.—*Sreenath Goocho v. Yusoo Khan*, I. L. R., 7 Cal. 556. [July 7, 1881.]

UPON an application under s. 235 of Act X. of 1877 (Civil Procedure Code) for the execution of a decree, which directed the judgment-debtor forthwith to pull down and remove such portion of a wall as had been erected by him upon the wall of the decree-holder, the mode in which the assistance of the Court was required to be given was stated in column j of such application to be by giving the decree-holder possession of his wall by pulling down the wall erected thereon. The Court directed an order to issue to the nazir to remove the judgment-debtor's wall from the top of the decree-holder's wall. *Held* that the decree-holder's application could not be granted in that form, and that he should have asked the assistance of the Court to be given in the way provided for by s. 260 of Act X. of 1877, by the imprisonment of the judgment-debtor or the attachment of his property or both. *Held* also that the Court was wrong in passing the order it had, but that it should have pointed out to the decree-holder the manner in which he should have asked the assistance of the Court to be given and the remedy to which he was entitled ; and that, upon such amended application being made, the proper course to pursue was to serve a notice on the judgment-debtor directing him to comply with the order contained in the decree within a time to be fixed by such notice ; and that, if he failed to comply with such order within the time so limited, the Court might then, at the instance of the decree-holder, make an order, either for the judgment-debtor's imprisonment, or for the attachment of his property, due regard being had to the provision of s. 260 in the latter case. *Held*, further, that the High Court, in special appeal, should not vary the order for execution which had been passed in such a way as to give the decree-holder that relief for which he did not ask.—*Protap Chunder Doss v. Peary Chowdhurani*, I. L. R., 8 Cal. 174. [Aug. 25, 1881.]

THE plaintiff, having obtained a decree against the defendant in the Court of Small Causes at Poona, applied, under s. 20 of Act XI. of 1865, to the Court of the Subordinate Judge at the same place for execution against the inalienable property of the defendant. Notice having been issued to the defendant under s. 218 of the Civil Procedure Code (Act XIV. of 1882) calling upon him to show cause why execution should not issue against him, he appeared and applied to be allowed to pay the judgment-debt by instalments, alleging that he was an agriculturist, and pleading his inability to pay in a lump sum. The plaintiff denied that the defendant was an agriculturist. The Subordinate Judge raised an issue as to whether the defendant was an agriculturist, and having, after inquiry, found the issue in the affirmative, was of opinion that the decree should be considered a nullity, and should not be executed, inasmuch as the defendant being an agriculturist, the Court of Small Causes had no jurisdiction to pass it. On reference to the High Court, *Held* that the Subordinate Judge was not competent to question the validity of the Small Cause Court decree, his duty being confined to enforcing it, on the "presentation of a copy of it and certificate," as provided by s. 20 of Act XI. of 1865. Nor could he take any notice of the status of the defendant as an agriculturist. The only course open to the defendant was to apply to the Small Cause Court for a review of its judgment, for which purpose the Subordinate Judge might stay the execution of the decree as provided by s. 239 of the Civil Procedure Code (Act XIV. of 1882).—*Kasturshot Javershet v. Rama Kanhoji*, I. L. R., 10 Bom. 65. [July 6, 1885.]

THE rule of Civil Procedure contained in the last clause of s. 258 of the Civil Procedure Code (Act XIV. of 1882)—that uncertified adjustments of a decree are not to be recognized by "any Court"—does not affect the substantive criminal law. The words "any Court" in that clause have no application to a Criminal Court investigating a charge of fraudulently executing a decree under s. 210 of the Indian Penal Code (Act XLV. of 1860). Those words do not bar any criminal remedy which an injured judgment-debtor may have against a fraudulent decree-holder, whether by a prosecution under s. 193, 210, 406, or any other section of the Indian Penal Code. In s. 210 of the Indian Penal Code the word "satisfied" is to be understood in its ordinary meaning, and not as referring to decrees, the satisfaction of which has been certified to the Court. Under s. 235 of the Code of Civil Procedure (Act XIV. of 1882), the decree-holder, or the party who applies for execution, is bound to state in his application any adjustment between the parties after decree, whether such adjustment has or has not been previously certified to the Court. Intentional omission to make such statement amounts to an offence under s. 193 of the Indian Penal Code (Act XLV. of 1860). S. 199 of the Penal Code (Act XLV. of 1860) does not apply to applications for execution containing false averments.—*Queen-Empress v. Bāpuji Dayāram*, I. L. R., 10 Bom. 288. [Feb. 18, 1886.]

236. Whenever an application is made for the attachment of any moveable property belonging to the judgment-debtor, but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

Application for attachment of moveable property to be accompanied with inventory.

Extending to Provincial & C. Courts.

IN execution of a decree passed more than twelve years before the date of the Civil Procedure Code (Act X. of 1877), certain judgment-creditors applied for the attachment and sale of certain specified property belonging to their judgment-debtor, previous to the date on which the three years allowed for such execution under s. 230 would have expired. Subsequently, after the three years had elapsed, they filed a fresh application, praying that certain other property of their judgment-debtor might be attached and sold in lieu of that specified in their former application, and that the latter might be released. *Held* that execution of the decree was barred by limitation. *Per* Prinsep, J.—Under s. 230 of the Civil Procedure Code, it was intended by the Legislature that a decree-holder, seeking to execute a decree passed more than twelve years before, should have one opportunity to execute that decree, and that, if he fails to satisfy it on that application, any further application becomes barred.—*Sreenath Gocho v. Yusoof Khan*, I. L. R., 7 Cal. 556. [July 7, 1881.]

237. Whenever an application is made for the attachment of any immovable property belonging to the judgment-debtor, it shall contain at the foot a description of the property sufficient to identify it, and also a specification of the judgment-debtor's share or interest therein to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

Further particulars when application is for attachment of immovable property.

Every such description and specification shall be verified in manner hereinbefore provided for the verification of plaints.

UNDER the Civil Procedure Code (Act VIII. of 1859) an application to the Court to continue the attachment of immovable property, but to stay the sale of it, *held* to be a proceeding to keep in force the decree.—*Núkauna v. Ramasāmi*, I. L. R., 2 Mad. 218. [Jan. 21, 1881.]

APPLICATION was made for the attachment, in execution of a decree, of a *muafi* holding belonging to the judgment-debtor. The numbers and areas given in such application as the numbers and areas of the lands comprised in such holding were the numbers and areas of certain revenue-paying lands, and were not the numbers and areas of any lands held as *muafi* by the judgment-debtor. The order of attachment described the property as described in the application for attachment. The judgment-debtor having alienated by sale a *muafi* holding belonging to him, the decree-holders sued to have such alienation set aside as void under the provisions of s. 276 of Act X. of 1877. *Held* that, having regard to the description given in the application for attachment and the order of attachment, it could not be said that the *muafi* holding alienated by the judgment-debtor was under attachment at the

time of the alienation, and its alienation was therefore not void under s. 276 of Act X. of 1877. *Held* also that the material misdescription of the property in this case in the order of attachment protected the alienees, who were *bona-fide* purchasers, from having the alienation set aside as void under s. 276, as the attachment could not, under the circumstances, be held to have been "duly intimated and made known" as required by that section.—*Gumani v. Hardwar Pandey*, 1 L. R., 3 All. 698. [April 25, 1881.]

IN execution of a decree passed more than twelve years before the date of the Civil Procedure Code (Act X. of 1877), certain judgment-creditors applied for the attachment and sale of certain specified property belonging to their judgment-debtor, previous to the date on which the three years allowed for such execution, under s. 230, would have expired. Subsequently, after the three years had elapsed, they filed a fresh application, praying that certain other property of their judgment-debtor might be attached and sold in lieu of that specified in their former application, and that the latter might be released. *Held* that execution of the decree was barred by limitation. *Per* Prinsep, J.—Under s. 230 of the Civil Procedure Code, it was intended by the Legislature that a decree-holder seeking to execute a decree passed more than twelve years before, should have one opportunity to execute that decree, and that, if he fails to satisfy it on that application, any further application becomes barred.—*Sreenath Goocho v. Yusoff Khan* 1 L. R., 7 Cal. 556. [July 7, 1881.]

A DECREE-HOLDER, on the 8th July 1885, applied for execution of a decree dated the 10th July 1873, omitting to set out specifically in such application a description of the immoveable property sought to be attached. On the 24th July he applied for and obtained one month's time to file a list of these properties; and on the 7th August, after filing the list, applied for the attachment and sale of such properties. The judgment-debtor contended that execution was barred by limitation. *Held* that the omission to file on the 8th July the list describing specifically the properties sought to be attached was a mere defect of description which could be remedied under s. 245 of the Code of Civil Procedure by allowing an amendment to be made; and, further, that the two applications of the 8th and 24th July should be considered as one entire application dating from the date of the 8th July. *Syud Mahomed v. Syud Abuloolah* (12 C. L. R. 279) followed.—*Macgregor (J. C.) v. Farini Churn Sircar*, (1 L. R., 14 Cal. 124. [Aug. 11, 1886.]

238. If the property be land registered in the Collector's office, the application for attachment shall be accompanied by an authenticated extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue, for such land, and the shares of the registered proprietors.

C.—Of staying Execution.

Extending to
Provincial S.
C. Courts.

239. The Court to which a decree has been sent for execution under this Chapter shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was made, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto;

and in case the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution or discharge of such property or person pending the result of the application for such order.

WHERE a Court in one district transfers a decree for execution to a Court situate in another district, it is beyond the jurisdiction of the Court executing the decree to question the correctness or propriety of the order under which the decree was sent to such Court for execution. Where, in the opinion of the Court, sufficient cause has been shown

against the execution of a decree transferred for execution, the Court executing the decree should follow the procedure prescribed by s. 239 of the Code of Civil Procedure.—*Beerchunder Manikya v. Maymana Bibee*, I. L. R., 5 Cal. 738. [Feb. 27, 1880.]

WHERE a decree passed by a Court governed by the Code of Civil Procedure is sent for execution to another Court in British territory likewise governed by the Code, it is not open to the latter to refuse to execute it on the ground that the former had no jurisdiction. In case of doubt, the Court where execution is sought may adjourn the execution-proceedings in order to enable the party interested to make an application to the Court passing the decree, and thence, if necessary, to the higher Courts of the same province in their turn.—*Chogálál v. Major Trueman*, I. L. R., 7 Bom. 481. [Aug. 13, 1881.]

IT is not open to the Court to refuse to execute a decree against which no appeal has been preferred, and the time for appealing against which has expired.—*Ishan Chauder Roy v. Ashanoollah Khan*, I. L. R., 10 Cal. 817. [June 10, 1884.]

THE powers which the foreign Court has, under s. 228 of the Civil Procedure Code, are confined to the execution of the decree, and the Court cannot question the propriety or correctness of the order directing execution, nor can it, with reference to s. 239 of the Code, stay execution except temporarily. *Held*, therefore, where the drawers of a hundi, against whom the indorsee from the payee had obtained a decree on the hundi, objected in the Court to which the decree had been transmitted for execution that execution should not be allowed, because the payee had paid the amount of the hundi to the decree-holder, after the decree had been passed, and such Court refused to entertain the objection, that the order of the lower Appellate Court directing that the parties should be allowed to produce evidence in regard to the alleged payment, and that, should the Court of first instance find that the decree-holder had received satisfaction to the full amount of the decree, the judgment-debtors should be absolved from all liability under the decree, could not be maintained.—*Ram Lal v. Radhey Lal*, I. L. R., 7 All. 330. [Jan. 7, 1885.]

THE plaintiff, having obtained a decree against the defendant in the Court of Small Causes at Poona, applied, under s. 20 of Act XI. of 1865, to the Court of the Subordinate Judge at the same place for execution against the immoveable property of the defendant. Notice having been issued to the defendant under s. 243 of the Civil Procedure Code (Act XIV. of 1882) calling upon him to show cause why execution should not issue against him, he appeared and applied to be allowed to pay the judgment-debt by instalments, alleging that he was an agriculturist, and pleading his inability to pay in a lump sum. The plaintiff denied that the defendant was an agriculturist. The Subordinate Judge raised an issue as to whether the defendant was an agriculturist, and, having, after inquiry, found the issue in the affirmative, was of opinion that the decree should be considered a nullity, and should not be executed, inasmuch as the defendant being an agriculturist, the Court of Small Causes had no jurisdiction to pass it. On reference to the High Court, *held* that the Subordinate Judge was not competent to question the validity of the Small Cause Court decree, his duty being confined to enforcing it, on the "presentation of a copy of it and certificate," as provided by s. 20 of Act XI. of 1865. Nor could he take any notice of the status of the defendant as an agriculturist. The only course open to the defendant was to apply to the Small Cause Court for a review of its judgment, for which purpose the Subordinate Judge might stay the execution of the decree as provided by s. 239 of the Civil Procedure Code (Act XIV. of 1882).—*Kasturshet Javershet v. Rámá Kánhoji*, I. L. R., 10 Bom. 65. [July 6, 1885.]

A JUDGMENT-DEBTOR, once arrested and imprisoned in execution of a decree, cannot, under the Civil Procedure Code, be again arrested under a fresh writ of attachment on the same decree.—*Secretary of State for India in Council v. Judah*, I. L. R., 12 Cal. 552. [April 1, 1886.]

ON the 4th of March 1884, a decree-holder applied to the Court of the Subordinate Judge of Moorsheadabad (where the decree was passed) for transfer of the decree to the District Court of Beerbhoom for execution. The transfer was made, and, on application by the decree-holder, the judgment-debtor's properties in Beerbhoom were attached. Thereupon the judgment-debtor objected to the attachment, and obtained an order under s. 239 of the Code of Civil Procedure, staying the execution-proceedings. The judgment-debtor then applied to the Court of the Subordinate Judge at Moorsheadabad objecting to the execution of the decree on the ground that it was barred by limitation. The objection was overruled by the Subordinate Judge, and his decision was upheld on appeal to the District Judge. On second appeal to the High Court, *held* that the Moorsheadabad Court was competent to hear and determine the plea of limitation. *Held* also that the fact of the judgment-debtor's not raising the plea of limitation in the Beerbhoom Court did not,

under the circumstances, preclude him from relying on it in his subsequent application to the Court at Moorshedabad.—*Sriharri Mundul v. Murari Chowdhry*, I. L. R., 13 Cal. 257. [July 2, 1886.]

Extending to
Provincial S.
C. Courts.

240. Before passing an order under section 239 to stay execution, or for the restitution of property or the discharge of the judgment-debtor, the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

Ditto.

241. No discharge under section 239 of the property or person of a judgment-debtor shall prevent it or him from being retaken in execution of the decree sent for execution.

A JUDGMENT-DEBTOR, once arrested and imprisoned in execution of a decree, cannot, under the Civil Procedure Code, be again arrested under a fresh writ of attachment on the same decree.—*Secretary of State for India in Council v. Judah*, I. L. R., 12 Cal. 652. [April 1, 1886.]

Ditto.

242. Any order of the Court by which the decree was passed, or of such Court of Appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

Ditto.

243. If a suit be pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may (if it think fit) stay execution on the decree, either absolutely or on such terms as it thinks fit, until the pending suit has been decided.

A DECREE-HOLDER having attached the property of his judgment-debtor in execution, the latter applied for a stay of execution until the decision of a pending suit brought by him against the judgment-creditor. The Court allowed the application, continuing the attachment of the property, and struck the execution-case off the file. The decree-holder appealed to the High Court. *Held* that no appeal lay.—*Nihal Chand alias Chuttoo Lal v. Rameshbari Dassie*, I. L. R., 9 Cal. 214. [June 30, 1882.]

AN order under s. 243 of the Civil Procedure Code staying execution of a decree determines a question relating to the execution of the decree within the meaning of s. 244, and is, therefore, a decree within the meaning of s. 2. An appeal, therefore, lies from such order.—*Steel v. Ichchamoyi Chowdhry*, I. L. R., 13 Cal. 111. [Mar. 18, 1886.]

D.—Questions for Court executing Decree.

Ditto.

244. The following questions shall be determined by order of the Court executing a decree, and not by separate suit (namely)—

(a) questions regarding the amount of any mesne-profits as to which the decree has directed inquiry ;

(b) questions regarding the amount of any mense-profits or interest which the decree has made payable in respect of the subject-matter of a suit, between the date of its institution and the execution of the decree, or the expiration of three years from the date of the decree ;

(c) any other questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge, or satisfaction of the decree.

Nothing in this section shall be deemed to bar a separate suit for mesne-profits accruing between the institution of the first suit and the execution of the decree therein, where such profits are not dealt with by such decree.

WHERE an application was made for the issue of execution of decree, and the District Munsif made an order refusing execution, the decree being one passed not in a regular suit, and governed by the one-year limitation, and the Subordinate Judge on appeal reversed the Munsif's order, applying the three years' limitation, *held* by the High Court that, as Act X. of 1877, s. 588, provided that orders passed in appeal from orders under s. 244 should be final, no second appeal lay, and that the High Court could not interfere under s. 622, as the Subordinate Judge has jurisdiction to hear the appeal.—*Sungaprakāś Rāu v. Vairya Sannyāsi Rāzu*, I. L. R., 1 Mad. 401. [Sep. 10, 1878.]

MONEYS realized as due under a decree, if unduly realized, are recoverable by application to the Court executing the decree, and not by separate suit. The opinion of Stuart, C.J., in the *Agra Savings Bank v. Sri Ram Mitter* (I. L. R., 1 All. 388), differed from *Haramohini Chaudharain v. Dhonehani Chaudharain* (1 B. L. R., A. C., 193) and *Ekauri Singh v. Baij Nath Chattapadhyā* (4 B. L. R., A. C., 111) distinguished.—*Partab Singh v. Beni Ram*, I. L. R., 2 All. 61. [Nov. 14, 1878.]

THERE is no appeal against an order made under Act X. of 1877, s. 244, determining questions between the parties to a suit as to the amount of mesne-profits recovered by the plaintiff subsequently to the decree, and as to the amount payable on account of the costs of execution of that decree.—*Dalpatdhāi Bhagubhāi v. Amarsang Khemā Bhai*, I. L. R., 2 Bom. 553. [Mar. 20, 1878]. See also I. L. R., 5 Cal. 50. [April 1, 1879.]

A DECREE-HOLDER, having assigned a share of her decree, applied several times jointly with such assignee for execution. On a subsequent application made by the original decree-holder alone, the Court, while granting the application, directed that the proceeds arising from such execution should only be paid over to the co-decree-holders jointly. *Held* that the question in dispute being one between co-decree-holders, and not between parties to the suit or their representatives, as contemplated by Act X. of 1877, s. 244, art. c, no appeal would lie from such order.—*Cyamonce v. Radhā Raman*, I. L. R., 5 Cal. 592. [Dec. 4, 1879.]

AN order refusing an application to execute a decree is not an adjudication within the rule of *res judicata*.—*Hurrosoondary Dassee v. Juggobundhoo Dutt*, I. L. R., 6 Cal. 203. [June 28, 1880.]

THE power given by s. 329 of the Civil Procedure Code to make such order as the Court shall see fit must be construed with regard to the circumstances in respect of which the power is to be exercised. An order under s. 329 should be the result of the fact that the defendant in the suit, who is precluded by the decree from disputing plaintiff's right, unjustly instigates a third party, who has no real interest in the property, to prevent the plaintiff from getting the benefit of his execution. A Court has no power under this section to determine, as between the judgment-creditor and a third party obstructing the execution of the decree, important questions on the merits which are wholly unconnected with, and cannot be affected by, the fact that the obstruction is made at the instigation of the defendant.—*Govinda Nair v. Késava* I. L. R., 3 Mad. 81. [Oct. 27, 1880.]

By a decree in an administration-suit, A was appointed Receiver "to manage the estate." A died, and by a subsequent order B was appointed Receiver. One of the defendants in the suit applied to have B removed from the office of Receiver on the ground of his alleged mismanagement of the estate. The application was refused. *Held* that the order of refusal was appealable, whether the former Code or the present Code of Civil Procedure was deemed to be applicable, being an order made in respect of a question arising between the parties to a suit relating to the execution of the decree.—*Mithibāi v. Limji Nowroji Banaji*; *Harrivindubhdas Calyāndās v. Ardasar Framji Moos*, I. L. R., 5 Bom. 45. [Dec. 3, 1880.]

WHERE a decree-holder, declared to be entitled to possession of certain lands, subsequent to decree executed a *pattā* in favour of his judgment-debtor, who was then in possession, and afterwards took out execution under his decree, *held* (on an objection by the judgment-debtor that, under these circumstances, he was entitled to possession) that satisfaction of the decree not having been entered up, such objection could not be dealt with under s. 244 of the Civil Procedure Code. *Held* also that s. 258 of the Civil Procedure Code deals with the adjustment of any decree, and not merely with the adjustment of a money-decree.—*Baba Mohamed v. Webb*, I. L. B., 6 Cal. 786. [Jan. 19, 1881.]

WHERE the plaintiff in a suit prays that a person may be substituted on the record as the heir of a defendant who has died, the Judge should raise an issue as to whether the person sought to be substituted is the heir of the deceased defendant. In 1872, A brought a suit on a mortgage against the mortgagor, a Hindu widow, who died pending the suit. A then applied that the suit should be revived against B as the representative of the defendant. B denied that he was such representative, but the Judge refused to go into the question, made B a party, and gave A a decree for the sale of the mortgaged property. B subsequently brought a suit to have it declared, *inter alia*, that the mortgage and decree only covered the widow's life-interest. Held that the suit was not barred either as *res judicata* or under the provisions of s. 244 of the Code of Civil Procedure.—*Kanai Lal Khan v. Sashi Bhuson Biswas*, I. L. R., 6 Cal. 777. [Feb. 9, 1881.]

M, who held a decree against S for possession of certain immoveable property and costs, assigned such decree to S by way of sale, agreeing to deliver the same to him on payment of the balance of the purchase-money. He subsequently applied for execution of the decree against S, claiming the costs which it awarded. S thereupon paid the amount of such costs into Court, and, having obtained stay of execution, sued M for such decree, claiming by virtue of such assignment. The lower Court held that the suit was barred by the provisions of s. 244 of Act X. of 1877, and also, treating such assignment as an uncertified adjustment of such decree, that it was barred, by the terms of the last paragraph of s. 258 of that Act. Held that the suit was not barred by anything in either of those sections. The words "any Court" in the last paragraph of s. 258 refer to proceedings in execution and to the Court or Courts executing a decree.—*Sita Ram v. Mahipal*, I. L. R., 3 All. 533. [Feb. 21, 1881.]

S, alleging that a money-decree against him held by G had been adjusted out of Court by a payment in cash and the delivery of certain property, and that M had, notwithstanding such adjustment, applied for execution of such decree, and recovered the amount thereof, as the Court executing such decree had refused to determine whether it had been satisfied on the ground that such adjustment had not been certified, sued M for the money which he had paid him out of Court. Held that the suit was not barred by the provisions of s. 244 of Act X. of 1877 or of s. 258 of that Act. The last paragraph of s. 258 means that the Court executing the decree shall not recognize an uncertified payment or adjustment out of Court. It does not prohibit a suit for money paid to a decree-holder out of Court, and the payment of which, not being certified, could not be recognized, and which the decree-holder had not returned, but had misappropriated by taking out execution of the decree a second time, and securing the amount in full through the Court.—*Shadi v. Ganga Sahai*, I. L. R., 3 All. 538. [Feb. 28, 1881.]

ONE Khelut Chunder was entitled to a share in Pargana Alumpore. Before he obtained possession, Government revenue on the whole estate fell due. Khelut failed to pay his sharer, and his co-sharer, Kaminee, to save the estate, paid the whole sum due, and subsequently sued Khelut for the amount, eventually obtaining a decree. Subsequently this decree became vested in one Rutnessur, and the Pargana Alumpore came into the possession of Kaliprosono Ghose. Rutnessur obtained an order for execution against the property of Khelut, and, having transferred his decree to the High Court, proceeded to enforce the decree against Krishto Mohinee, the widow of Khelut, and her son, by attaching the family dwelling-house in Calcutta. The widow and son then brought this suit against Kaliprosono to have the share of Khelut in Alumpore ascertained, and praying for a decree calling upon Kaliprosono to pay the amount of the value of the share of Alumpore in satisfaction of Rutnessur's decree. Held that the suit could not be maintained so far as it attempted to make the decree a charge against Alumpore. Questions as to part-satisfaction of a decree cannot, according to cl. c, s. 244 of Act X. of 1877, be raised in a separate suit. That section alludes to parties to the decree or their representatives; but it is not on that account open to a plaintiff to evade the section by adding an unnecessary party to the suit. Held on appeal that the suit was rightly dismissed; that, as far as Rutnessur was concerned, it had already been decided that Rutnessur was entitled, if he so chose, to execute his decree against the Calcutta property; and that, therefore, that question was *res judicata*; and that, as regards the plaintiff's claim, that the patni given by Kaliprosono to Hurry Churn should be treated as part-payment to Rutnessur, such a question could only be decided in execution-proceedings. That the mere existence of the agreement between Kaliprosono, Rutnessur, and Hurry Churn, did not entitle the plaintiff to join them as co-defendants in the suit. That, as far as Kaliprosono was concerned, the suit brought against him could only be treated as a suit to establish a charge or lien on land out of Calcutta, and therefore the Court had no jurisdiction to try it.—*Krishto Mohinee Dowse v. Kaliprosono Ghose*, I. L. R., 8 Cal. 402. [Mar. 7, 1881.]

AN order passed on appeal by a High Court determining a question mentioned in s. 244 of Act X. of 1877 is a final "decree" within the meaning of s. 595 of that Act. *Held* therefore, where such an order involved a claim or question relating to property of the value of upwards of ten thousand rupees, and reversed the decisions of the lower Courts, that notwithstanding the value of the subject-matter of the suit in which the decree was made in the Court of first instance was less than that amount, such order was appealable to Her Majesty in Council.—*Ram Kirpal Shukul v. Rup Kuar*, I. L. R., 3 All. 633. [Mar. 14, 1881.]

IN 1878, a decree-holder, having received certain grain from the judgment-debtor in satisfaction of the decree, failed to certify satisfaction of the decree to the Court in accordance with the provisions of s. 258 of the Code of Civil Procedure, 1877, and executed the decree nevertheless. In a suit for damages against the decree-holder it was held that a judgment-debtor's remedy for the wrong suffered was not taken away by the provisions of ss. 244 and 258 of the Code.—*Vīrarāghava Reddi v. Subbak*, I. L. R., 5 Mad. 397. [May 11, 1881.]

AN order for attachment and sale of property in execution of a decree is an order "of the same nature with" an order made in the course of a suit for attachment of the debtor's property. The latter order is appealable under s. 588, cl. r, of the Code of Civil Procedure. It follows that an order for attachment and sale in execution of a decree is (according to the requirement of s. 588, cl. j) "of the same nature with appealable orders made in the course of a suit," and therefore is appealable under that section.—*Polokdhari Rai v. Radha Pershad Singh*, I. L. R., 8 Cal. 28. [June 23, 1881.]

AN order under s. 243 of the Civil Procedure Code staying execution of a mortgage decree obtained against the representatives in title of the mortgagor, on the ground that, owing to disputes among such representatives as to their respective shares in the property left by the mortgagor, an administration-suit had been instituted and was pending, comes within cl. c of s. 244, inasmuch as the question raised thereby in a question arising between the parties to the suit in which the decree was passed and relating to the execution of the decree, and is therefore appealable. Where such an order was made, it was *held*, on appeal, that it was illegal, in so much that it prevented a secured creditor from availing himself of the benefit of his security by realizing the property specifically hypothecated by the mortgage.—*Krishna Mohinee Dasi v. Shyama Charan Nag*, 9 C. L. R. 344. [Aug. 29, 1881.]

IN execution of a decree on a mortgage-bond executed by the father of the judgment-debtors, since deceased, which decree directed that the mortgage-lien should be enforced, *first*, by sale of the property specially mortgaged; and, *secondly*, if the debt remained unsatisfied, by the sale of the other property in the possession of the judgment-debtors—the judgment-creditors proceeded to have the mortgaged property sold. After the issue of the sale-notification, and three days prior to the date fixed for the sale, one of the judgment-debtors applied to have the sale stayed, on the ground that an administration-suit was pending with respect to the property of his father, the mortgagor, and also asked that a receiver might be appointed and arrangements made for the purpose of paying off the mortgage-debt and saving the property from being sold. On this application the Court passed an order staying the sale. *Held* that such order was appealable, being a question arising between the parties to the suit in which the decree was passed, and relating to the execution of that decree, and as such coming within the provision of cl. c, s. 244, Act X. of 1877 (Civil Procedure Code). *Held* also that the Court was wrong in passing such order, inasmuch as there were no reasonable grounds why a secured creditor should be debarred from enforcing his security pending the administration-suit.—*Kristomohiny Dossee v. Bama Churn Nag Chowdry*, I. L. R., 7 Cal. 733. [Aug. 29, 1881.]

A SUIT will not lie upon a decree the execution of which is barred by the provisions of the Limitation Act. A suit may be brought in the High Court of Bombay upon a judgment obtained in the Court of Small Causes of Bombay. The execution of the decrees in such suits is rigorously confined to immoveable estates. The ground of the interference of the High Court in such cases is that, practically, the judgment-creditor could not recover his debt except by process against the immoveable estate of the debtor. In such cases the plaintiff must contain an averment, and the plaintiff must establish to the satisfaction of the High Court, that there is not any sufficient moveable property of the defendant against which decrees of the Court of Small Causes can be fully executed, and that he has immoveable property situated within the original jurisdiction of the High Court against which execution can be had. *Moonshi Golam Arab v. Curreeem Bux Shaikji* (I. L. R., 5 Cal. 224) referred to.—*Fakirapa v. Pandurangapa*, I. L. R., 6 Bom. 7. [Sep. 13, 1881.]

WHERE a plaintiff, in bringing a suit for possession and for mesne-profits, approximately estimates the amount of such mesne-profits at a certain sum, and obtains a decree which leaves the amount due as mesne-profits to be ascertained in execution, he is not bound down to the amount claimed in his plaint, but if more is found due to him, he is entitled, on payment of further court-fees, to recover the larger amount so found due. *Baboojan Jha v. Byjnath Dutt Jha* (I. L. R., 6 Cal. 474) distinguished. A Court, in execution-proceedings, cannot look behind the decree when the decree does not limit the amount of *vasilat* to be awarded.—*Jadoomony Dabee v. Mafez Mahomed Ali Khan*, I. L. R., 8 Cal. 295. [Dec. 9, 1881.]

THE holder of a decree against a firm caused certain property to be attached in execution of the decree as the property of the firm. One of the partners in the firm objected to the attachment on the ground that such property was not the property of the firm, but was his private property. The Court disallowed the objection, whereupon such partner appealed from the order disallowing the objection. *Held* that such order was not one under s. 244 (c) of Act X. of 1877, but under s. 281, and was therefore not appealable.—*Abdul Rahman v. Muhammad Yar*, I. L. R., 4 All. 190. [Jan. 13, 1882.]

A SUIT for the recovery of money paid to a judgment-creditor out of Court in satisfaction of a decree, but not certified, is barred by s. 244 (c) of Act X. of 1877 and by the last paragraph of s. 258 as amended by Act XII. of 1879.—*Patankar v. Devji*, I. L. R., 6 Bom. 146. [Jan. 24, 1882.]

WHERE an order, requiring the decree-holder to give security within three days, is made under s. 546 by the Judge of the Court in which the decree was passed, and in which the execution is pending, such order is appealable as a decree under the provisions of ss. 2 and 244 (cl. c).—*Luchmeput Singh v. Sitanath Doss*, I. L. R., 8 Cal. 477. [Mar. 8, 1882.]

A JUDGMENT-DEBTOR who claims to have a sale of his land set aside on the ground of fraud committed by the judgment-creditor, who procured a sale without advertisement, and purchased the property without leave of the Court, is debarred from bringing a suit to set aside the sale, inasmuch as the question is one arising between the parties to the suit, and relates to the execution of the decree within the meaning of s. 244.—*Viraraghava Ayyangar v. Venkata Charyar*, I. L. R., 5 Mad. 217. [May 4, 1882.]

AN order directing an account is not an order in the nature of a final decree, and is unappealable: such an order merely directs certain proceedings to be taken, in order that a final decree may thereafter be made.—*Sreenath Roy v. Radhanath Mookerjee*, I. L. R., 9 Cal. 773. [July 7, 1882.]

A SUBORDINATE Judge admitted a plaint *in forma pauperis*, but, holding that he had no jurisdiction to try the suit, returned the plaint to the plaintiff for its presentation in the proper Court, and ordered each party to pay his own costs. After the presentation of the plaint in another Court, and before the termination of the suit, the Collector applied to the Subordinate Judge for execution of the order as to costs by seeking to recover the amount of the stamp-duty from the plaintiff. The Subordinate Judge refused to execute the order, on the ground that the pauper-suit was still pending in another Court. His order was affirmed by the District Judge in appeal. On second appeal to the High Court, *held* that there was no appeal, and, therefore, no second appeal, under s. 244 (cl. c) of the Civil Procedure Code (Act X. of 1877), against the order of the Subordinate Judge refusing execution of the order as to costs, inasmuch as the question was not between the parties to the suit. *Held* further that, under s. 412 of Act X. of 1877, the Subordinate Judge had no jurisdiction to make the order for payment of court-fees by the plaintiff. The High Court accordingly, in the exercise of their extraordinary jurisdiction, annulled the Subordinate Judge's order about costs, and all the subsequent proceedings consequent upon that order.—*Collector of Ratnagiri v. Janardan Vithal Kánt*, I. L. R., 6 Bom. 590. [July 20, 1882.]

IN 1875 a decree was passed against N as representative of L, who died pending the suit, declaring N liable to the extent of the assets of L which might have come to the hands of N. In 1879 the decree-holder applied for execution of the decree, and, without proof that any of the assets of L had come to the hands of N, obtained an order, and attached lands belonging to N. N objected to the attachment, but the Munsif, without investigation, rejected his claim, and directed N to bring a regular suit. The land was sold and purchased by A B. N, after an abortive attempt to obtain a review of the Munsif's order from his successor, brought a suit in 1890 against the decree-holder and A B to recover the land. *Held* that as N was a party to the former suit within the meaning of s. 244 of the Civil Procedure Code, 1877, the suit would not lie.—*Arundadhi Ammyar v. Natesha Ayyar*, I. L. R., 5 Mad. 391. [Aug. 14, 1882.]

CERTAIN persons, claiming by right of inheritance to C, sued B, N, A, K, and others for possession of certain immoveable property, and obtained a decree, dated in August 1876, for possession of the same. In the course of the litigation which ended in that decree, Z purchased certain immoveable property from B, N, A, and K. Z was subsequently dispossessed of such property in execution of the decree of August 1876. He thereupon sued the holders of that decree for possession of the same, alleging that his vendors had inherited the same from D, that it was not affected by that decree, and that he had been improperly dispossessed of it in execution of that decree. *Held* by the Court that, the plaintiff not being the representative of any of the parties to the suit in which that decree was passed, in the sense of s. 244 of the Civil Procedure Code, but being, if his allegations were true, a purchaser from certain of the judgment-debtors of property not affected by that decree, the suit was not barred by the provisions of that section. *Partab Singh v. Beni Ram* (I. L. R., 2 All. 61) distinguished. Observations by Stuart, C.J., on his judgment in *The Agra Savings Bank v. Sri Ram Mitter* (I. L. R., 1 All. 388), and on the judgment of the Full Bench in *Partab Singh v. Beni Ram* (I. L. R., 3 All. 61) referring to the judgment.—*Zauki Lal v. Jawahir Singh*, I. L. R., 5 All. 382. [Aug. 25, 1882.]

ON appeal from an order allowing an application by the legal representative of a deceased decree-holder for execution, the Appellate Court, holding that the applicant must obtain a certificate under Act XXVII. of 1860 before he could take out execution of the decree, made an order directing that execution of the decree should be stayed until the applicant had obtained such certificate. *Held* that such order fell under s. 244 of the Civil Procedure Code, and was therefore appealable. Also, following the principle enunciated in *Lachman v. Ganga Prasad* (I. L. R., 4 All. 485), that the possession of a certificate under Act XXVII. of 1860 was not "an imperative condition precedent to the institution" of execution-proceedings by the representative of a deceased decree-holder; but that, where the judgment-debtor objects to the title of the person claiming to execute the decree, the Court should consider whether the objection is vexatiously raised or is a *bond fide* one.—*Hoti Lal v. Hardeo*, I. L. R., 5 All. 212. [Aug. 29, 1882.]

A DECREE enforcing a first mortgage of certain property not being satisfied, the property was sold in execution of a decree of a later date enforcing a second mortgage of the property. *Per* Stuart, C.J.—That the decree enforcing the first mortgage could not be executed against the property, but the holder of such decree was bound to bring a fresh suit against the purchaser of the property to enforce his decree. *Per* Straight, Brodhurst, and Tyrrell, J.J.—That a fresh suit was the most convenient and expeditious remedy. *Per* Oldfield, J.—That the purchaser not being the "representative" of the judgment-debtor within the meaning of s. 244 (c) of the Civil Procedure Code, the holder of such decree must bring a fresh suit to enforce it.—*Jagat Narain v. Jagat Rup*, I. L. R., 5 All. 452. [Mar. 19, 1883.]

ON an application for execution for the full amount due under a decree by some of several joint decree-holders, the judgment-debtor objected to execution being granted for the full amount of the decree on the ground that he had already paid off a large portion of the money due under the decree to B, one of the joint decree-holders. The payment was made out of Court, but B, who claimed to be entitled to a 12½-anna share in the decree, certified the payment in the manner prescribed by s. 258 of the Civil Procedure Code (Act XIV. of 1882), and represented that his claim had been satisfied in full. The other joint decree-holders denied B's right to the 12½-anna share claimed by him, and refused to recognise the payment said to have been made to him. The lower Court disallowed the objection, and granted execution for the full amount of the decree. *Held* that, regard being had to the provisions of the General Clauses Act (I. of 1868), the word "decree-holder" in s. 258 of Act XIV. of 1882 should be read in the plural, and looking at the provisions of s. 231 of the later Act, the Court ought not to recognise payments made out of Court, unless made and certified for the benefit of all the joint decree-holders of any portion of the decree in excess of that to which the decree-holder so paid is undisputedly entitled. *Held* also that a judgment-debtor is entitled to credit for any sum paid *bond fide* to one of several joint decree-holders, and duly certified to the Court by the latter, and that the other joint decree-holders cannot execute the decree for more than their own share. *Held* further that in this case the lower Court was wrong in wholly ignoring the payment certified by the decree-holder B, and that it should have determined, *first*, whether the payment to B was a fraud on the other joint decree-holders; and, *secondly*, what amount the latter were entitled to have out of the whole decree, the latter being the main question between the applicants for execution and the judgment-debtor, and as such clearly within the scope of s. 244 of the Civil Procedure Code. See *Rames Nyna Koor v. Doolee Chund* (22 W. R. 77), *Brojeswari Chowdhraee v.*

Tripoora Soondere Debi (3 C. L. R. 513), and *Mahima Chandra Roy v. Pyari, Mohan Chowdhry* (2 B. L. R. Ap. 43).—*Tarruck Chander Bhuttacharjee v. Divendro Nath Sanyal*, 9 Cal. 831. [April 15, 1883.]

In a suit to recover possession of land, the defendants resisted execution on the ground that they were cultivators, and that the decree only authorized the plaintiff to recover possession as proprietor. The objection was overruled, and the defendants were ejected. They then sued to set aside the order made in the execution-proceedings and to recover possession. *Held* that the suit was barred under s. 244 (cl. c) of the Civil Procedure Code.—*Najhan v. Mahomed Taki Khan*, I. L. R., 9 Cal. 872. [April 19, 1883.]

S MORTGAGED four parcels of land to M. M obtained a decree against S directing the sale of the lands mortgaged. S died, and K was brought in as his representative under s. 234 of the Code of Civil Procedure. M applied for execution against the lands mortgaged as assets of S. K objected to the sale of three parcels, on the ground that one parcel belonged to himself (K), and two to the family to which S belonged, and of which K was the manager. The District Munsif investigated these questions under s. 244 of the Code of Civil Procedure, and directed that execution should proceed against all four parcels. The District Court on appeal reversed the order of the Munsif on the ground that he had no power to decide these questions under s. 244, and that the proper course was for M to attach the properties and for K to make a claim. This course was adopted, and K's claim was rejected, and the four parcels were sold and bought by V. K thereupon brought a suit against M and V to cancel the sales to V. *Held* that, by virtue of s. 244 of the Code of Civil Procedure, the suit would not lie.—*Kuriyali v. Mayan*, I. L. R., 7 Mad. 255. [Nov. 20, 1883.]

A SUIT for money having been brought against the holder of an impartible zamindari, a decree was passed in 1867 by consent to the effect that the zamindar undertook to pay a certain sum by yearly instalments and hypothecated certain land as security. A memorandum of this decree was registered under s. 42 of Act XX. of 1866. The last instalment fell due in February 1870. The decree was kept alive against the zamindar up to his death in 1873. Upon the death of the zamindar proceedings in execution were taken against his son who succeeded to the zamindari, but were set aside on appeal. In January 1882, a suit was brought against the son to recover the amount of the last instalment due by his father under the decree of 1867. *Held* that the suit was neither barred by the provisions of s. 244 of the Code of Civil Procedure, nor by limitation.—*Arunachala v. Zamindar of Sivagiri*, I. L. R., 7 Mad. 328. [Dec. 27, 1883.]

THE words, "the following questions shall be determined by order to the Court executing the decree," of s. 244 of the Code of Civil Procedure, must be interpreted to mean the Court executing the decree at the time when the application is made, and that they do not include the Court which has executed the decree, and has, therefore, become *functus officio*.—*Fakaruddin Mahomed Ahsan v. Official Trustees of Bengal*, I. L. R., 10 Cal. 538. [Feb. 21, 1884.]

A JUDGMENT-DEBTOR sued the decree-holder for recovery of possession of certain land which had been sold in execution of the decree, and to set aside the sale on the ground that the land was not liable, under s. 9 of the N. W. P. Rent Act, to sale in execution of decree. *Held* that the question at issue between the parties was clearly one relating to the executing and satisfaction of the decree, and that the suit was therefore barred by the provisions of s. 244 of the Civil Procedure Code.—*Janki Singh v. Ablakh Singh*, I. L. R., 6 All. 393. [May 26, 1884.]

A JUDGMENT-DEBTOR, alleging that his right as occupancy-tenant of certain land had been sold in execution of the decree, sued the decree-holder and the auction-purchaser to set aside the sale as illegal under s. 9 of the N. W. P. Rent Act. The Court of first instance decreed the claim, and ordered the defendant-decree-holder to refund the purchase-money. *Held* that, as between the defendant-decree-holder and the plaintiff, the question at issue was one arising between the parties to the suit in which the decree was passed, and relating to the execution, discharge, or satisfaction of the decree, and was therefore, under s. 244 of the Civil Procedure Code, to be determined by the Court executing the decree, and not by separate suit. *Janki Singh v. Ablakh Singh* (I. L. R., 6 All. 393) followed. *Held* also that, apart from this consideration, it was beyond the lower Court's power to make an order directing the decree-holder to refund the purchase-money, that being a matter between two co-defendants which was not raised, and could not be decided, in the present suit.—*Ram Gopal v. Khaiali Ram*, I. L. R., 6 All. 448. [June 13, 1884.]

A JUDGMENT-DEBTOR, upon the attachment of certain land in execution of decrees passed against him personally by the Revenue Court, instituted a suit for declaration and establishment of his right to such land, not as his own property, but as *wakf*, of which he was *mutawalli* or trustee. *Held* that, inasmuch as the plaintiff was not suing in his own right, but in his capacity as custodian, trustee, or manager of the *wakf* property, and he must, therefore, be taken to fill a character separate from that in which the decrees were passed against him by the Revenue Court, his suit was not barred by the provisions of s. 244 of the Civil Procedure Code. *Madho Prakash Singh v. Murli Manohar* (I. L. R., 6 All. 406) and *Shankar Dial v. Amir Haidar* (I. L. R., 2 All. 752) referred to.—*Nath Mal Das v. Tajammul Husain*, I. L. R., 7 All. 36. [July 23, 1884.]

THE provisions of s. 244 of the Civil Procedure Code govern equally the procedure of the Court which passed the decree when executing such decree, and the Court to which the decree is sent for execution. *Cooke v. Hiseeba Beebee* (N. W. P., H. C. R., 1882, p. 181), referred to. All orders staying execution of decrees, whether passed by the Court which passed the decree, or by the Court to which it is sent for execution, are "questions arising between the parties to the suit in which the decree was passed, and relating to the execution," thereof, within the meaning of s. 244 (c) of the Civil Procedure Code, and, as such, appealable, irrespective of the provisions of s. 588. *Kristomohiny Dossee v. Bama Churn Nag Chowdry* (I. L. R., 7 Cal. 733) and *Luchmeeput Singh v. Seeta Nath Doss* (I. L. R., 8 Cal. 477) followed. The widest meaning should be attached to cl. c of s. 244 of the Civil Procedure Code, so as to enable the Court of first instance and the Court of Appeal to adjudicate upon all kinds of questions arising between the parties to a decree and relating to its execution. There is no provision in the law which empowers the Court passing a decree to set aside the proceedings under which the decree-holder has already been placed in possession in execution of his decree. The provisions of s. 243 of the Civil Procedure Code have no reference to a case in which execution has already been carried out, and the decree-holder placed in possession of the property decreed to him.—*Ghazidin v. Fakir Bakhsh*, I. L. R., 7 All. 73. [Aug. 7, 1884.]

THE consideration for a mortgage consisted partly of the amount of two decrees held by the mortgagee against the mortgagor. The mortgagee having sued to enforce the mortgage, the mortgagor pleaded failure of consideration as a bar to the enforcement of the mortgage. This plea was based on the allegation that the mortgagee had not certified the adjustment of the decrees as provided by s. 258 of the Civil Procedure Code, and they were still in force under the terms of that section. *Per Duthoit, J.*, that the failure of the mortgagee to certify the adjustment of the decrees did not constitute a failure of consideration, because he did not covenant to certify such adjustment, and it was not, in fact, necessary for him to do so; because he could not seek execution of the decrees on the ground that, though unsatisfied, they were still in force under s. 258 of the Civil Procedure Code, without becoming liable to penalties; and because, if the mortgagor considered the entering up of the adjustment of the decrees to be imperative, he had his remedy by application to the Court in the terms of s. 258. *Per Mahmood, J.*, that the adjustment of a decree out of Court, if never certified to the Court, is, under s. 258, ineffectual only so far as the execution of the decree is concerned; that there is nothing in the Contract Act to make such an adjustment invalid as the consideration for an agreement; that an agreement founded on such consideration may be enforced without defeating the objects of s. 258; and that consequently there was, in respect of the amount of the decrees, valid consideration for the mortgage. *Gunamani Das v. Pran Kishori Dasi* (5 B. L. R. 223; 13 W. R. 69), *Meer Mahomed Kazem Jowharry v. Khetoo Bibee* (20 W. R. 150), *Guni Khan v. Koonjo Behary Sein* (3 C. L. R. 414), *Davlati v. Ganesh Shashtri* (I. L. R., 4 Bom. 223), *Shadi v. Ganga Sahai* (I. L. R., 3 All. 538), and *Sita Ram v. Mahipal* (I. L. R., 3 All. 533), followed. *Patankar v. Devji* (I. L. R., 6 Bom. 146) and *Pundrang Ramchandra Chowghule v. Narayan* (I. L. R., 8 Bom. 300) dissented from.—*Ramghulam v. Janki Rai*, I. L. R., 7 All. 124. [Aug. 15, 1884.]

IN 1877 the plaintiff sued the defendant for possession of certain properties, and obtained a decree. In execution of this decree, the plaintiff, on 12th of July 1879, obtained formal possession of the properties sued for. The defendant continued to remain in actual possession and occupation of a portion of the premises, and refused to give up possession of the same to the plaintiff, who served him with a two months' notice to quit in June 1881. The plaintiff did not evict the defendant in execution of the decree obtained by him against the defendant, but instituted a fresh suit for that purpose. *Held* that such a suit would lie. *Seemle*, that the delivery of formal possession in execution of a decree for possession gives a cause of action, against a defendant who remains in occupation of the premises, which may be enforced in a regular suit.—*Shama Charan Chatterji v. Madhub Chundra Mookerji*, I. L. R., 11 Cal. 93. [Sep. 12, 1884.]

THE plaintiff in a suit for possession of immoveable property obtained a decree for possession thereof, and in execution of the decree obtained possession of the property. This decree was subsequently reversed on appeal by the defendant. The decree of the Appellate Court was silent in respect of the mesne-profits which the plaintiff had received while in possession. The defendant instituted a suit to recover those profits. *Held, per Petheram, C.J., and Oldfield, Brodhurst, and Duthoit, J.J.,* that the suit was not barred by s. 244 of the Civil Procedure Code, the question raised by such suit, although it might have arisen out of the decree of the Appellate Court, not "relating to the execution, discharge, or satisfaction of the decree," within the meaning of that section (because, at the time, no such question had arisen or was in existence), and therefore not one in respect of which a separate suit is barred by that section. *Partab Singh v. Beni Ram* (I. L. R., 2 All. 61) distinguished by *Oldfield, J.* *Per Mahmood J.*—That the suit was not barred by s. 244, the mesne-profits sought to be recovered not having been realized in execution of the decree reversed on appeal. *Per Duthoit, J.*—The words in cl. c of s. 244, "any other questions arising," &c., should be read as "any other questions directly arising;" otherwise the most remote inquiries would be possible in the execution department.—*Ram Ghulam v. Dwarka Rai*, I. L. R., 7 All. 170. [Nov. 19, 1884.]

G OBTAINED a decree against R for possession of a house, and in execution thereof obtained possession. On appeal, the decree was set aside by the High Court, whose decree did not direct that the appellant should be restored to possession, and was silent as to mesne-profits. *Held* that, with reference to s. 583 of the Civil Procedure Code, R was entitled to recover possession of the property in execution of the High Court's decree, but that, with reference to the decision of the Full Bench of the Court in *Ram Ghulam v. Dwarka Rai* (I. L. R., 7 All. 107), he could not, in execution of that decree, recover mesne-profits.—*Gannu Lal v. Ram Sahai*, I. L. R., 7 All. 197. [Dec. 4, 1884.]

THE ancestors of B mortgaged their share in a certain mehal to A. Subsequently B became entitled to this share in the mehal, and A obtained a decree on his mortgage, in execution of which the right, title, and interest of B was sold and purchased by C. Subsequently to this latter decree and sale, B obtained a decree against D for possession of certain lands which were proved to belong to this mehal. E then obtained a decree against B, in execution of which the right, title and interest of B in this same mehal was sold and purchased by F; C and F transferred their rights under their respective purchases to E. E thereupon, as purchaser of the right, title, and interest of B from F, applied to execute the decree obtained by B against D. This application was rejected by the Subordinate Judge, but on appeal to the District Judge was allowed. B thereupon applied to the High Court to have this order set aside. *Held* that the order should be set aside, inasmuch as no appeal lay from the order of the Subordinate Judge, the order not being a decree within the meaning of ss. 2 and 244 (cls. a, b, and c) of the Civil Procedure Code.—*Mohabir Singh v. Ram Baghowan Chowbey*, I. L. R., 11 Cal. 160. [Dec. 12, 1884.]

A SUIT upon a bond specially registered under the provisions of s. 58 of Act XX. of 1866 for an amount less than Rs. 500 is cognizable by a Mofussil Court of Small Causes, and under s. 586 of the Code of Civil Procedure no second appeal lies to the High Court against an order passed on an application for execution of a decree made in such a suit. *Quære*.—Whether an appeal lies at all against such an order passed in proceedings taken in execution of such a decree.—*Sri Bulov Bhattacharji v. Baburam Chattopadhyaya*, I. L. R., 11 Cal. 169. [Jan. 23, 1885.]

No second appeal lies to the High Court against an order passed on an application for execution of a decree made in a suit under s. 53 of Act XX. of 1866.—*Sri Bulov Bhattacharji v. Baburam Chattopadhyaya*, I. L. R., 11 Cal. 169. [Jan. 23, 1885.]

IN execution of a decree certain property was sold in pursuance of an order under s. 244 of the Civil Procedure Code, and purchased by a person not a party to the suit, who subsequently obtained possession of the property. That order was subsequently set aside. In a suit by the judgment-debtor to recover possession of the property from the auction-purchaser by setting aside the sale. *Held* that the order directing the sale had the force of a decree, and that the plaintiff was not entitled to the relief claimed.—*Jan Ali v. Jan Ali Chowdry* (10 W. R. 154) followed.—*Murari Singh, J.* I. L. R., 11 Cal. 382. [Feb. 17, 1885.]

WHERE certain property was attached in execution of a decree passed upon a bond against the legal representatives of the obligor, and the judgment-debtors objected to the attachment on the ground that the property was not part of the obligor's estate and liable to be taken in execution of the decree, but was property which they could claim in their own right, *held* that the matter in dispute was one between the parties to the suit in which the decree was passed, and relating to the execution, discharge, or satisfaction of the

decree within the meaning of s. 244 of the Civil Procedure Code, and was, therefore, to be determined in the execution department and not by regular suit. *Chowdry Wahed Ali v. Musammat Jumace*, (11 B. L. E. 155), *Shankar Dial v. Amir Haidar* (I. L. R., 2 All. 752), and *Nath Mal Das v. Tajammul Husain* (I. L. R., 7 All. 36), referred to. *Per Mahmood, J.*—That the turning point upon which the application of the rule contained in s. 244 of the Civil Procedure Code barring adjudication in a regular suit depends, is whether the judgment-debtor in raising objections to execution of decree against any property, pleads what may analogically be called a *ius tertii*, or a right which, although he represents it, belongs to a title totally separate from that which he personally holds in such property. *Kanai Lal Khan v. Sashi Bhuxon Biswas* (18 W. R. 102); dissented from.—*Ram Ghulam v. Hazaru Kuar*, I. L. R., 7 All. 547. [Feb. 24, 1885.]

THE transferee of a decree for costs, associating with him the transferor, made an application under s. 232 of the Civil Procedure Code to be allowed to execute the decree. The application was opposed by the judgment-debtor, and was rejected; and the Court referred the transferee to regular suit. After taking various proceedings ineffectually, he instituted a suit for the recovery of the sum to which he was entitled as costs of the decree transferred to him. *Held* that the plaintiff, as the holder of the decree by assignment, could only recover the amount under it by executing the decree, and not by a separate suit; but that he was entitled to have a decree declaring that the assignment to him of the decree-holder's rights under the decree was valid, and gave him a right to execute it, and that the Court's order under s. 232 which disallowed the execution was an improper one, a suit for this relief being maintainable; for, there being no appeal from orders under s. 232, there would otherwise be no remedy, and that, looking at the plaintiff and the issues on which the parties were divided, and the fact that the Court which refused the plaintiff's application for execution referred him to a regular suit, this relief might properly be given in the present suit. *Per Mahmood, J.*, that the suit was maintainable, inasmuch as the present plaintiff never having been accepted on the record as holder of the decree, the questions which were disposed of by the Court executing the decree, as between the plaintiff and the judgment-debtor, could not be regarded as questions with s. 244 of the Civil Procedure Code.—*Ram Bakhsh v. Panna Lal*, I. L. R., 7 All. 457. [Mar. 6, 1885.]

CERTAIN property was mortgaged by A to B. Subsequently this property was purchased by C at a sale held in execution of a decree obtained by a third person against A. B then brought a suit on his mortgage-bond against A and C, and obtained a decree for the sale of the mortgaged properties, and also a personal decree against A. B assigned his rights under this decree to C, who applied for execution under s. 232 of the Code. A objected to execution issuing, relying on proviso b to s. 232. *Held* that proviso b to s. 232 applies only to decrees for money personally due by two or more persons; and that the decree obtained by B against A and C not being a personal decree against C (he having been made a defendant only by reason that he had purchased the mortgaged property subject to the mortgage-debt), C, as assignee of B, was entitled to take out execution.—*Lala Bhagun Pershad v. Holloway*, I. L. R., 11 Cal. 393. [Mar. 6, 1885.]

THE words "subsisting decree," in the proviso to s. 316 the Code of Civil Procedure refer to a decree which is unreversed and in full force, and not to a decree the execution of which is barred by limitation. Where a decree under which a sale takes place remains unreversed, and the sale under it has been confirmed, a sale certificate will operate as a valid transfer of the property sold, notwithstanding that the sale has actually taken place at a time when execution of the decree is barred by limitation.—*Saroda Churn Chuckerbutty v. Mahomed Isuf Moah*, I. L. R., 11 Cal. 376. [Mar. 10, 1885.]

AN objection by a judgment-debtor to a sale in execution of a decree on the ground that the property which was the subject of sale was not legally saleable, is not a matter which can be entertained by the Court under s. 311 of the Civil Procedure Code, so as to afford a ground for setting aside the sale on account of material irregularity in publishing or conducting it. *Ram Gopal v. Khiali Ram* (I. L. R., 6 All. 448) and *Janki Singh v. Ahlak Singh* (I. L. R., 6 All. 393) distinguished. *Per Mahmood, J.*—The scope of s. 244 of the Civil Procedure Code is limited to matters connected with the execution of the decree between the decree-holder and the judgment-debtor, and cover all the questions which may arise between the decree-holder and the judgment-debtor relating to the execution, &c., of the decree. Questions that may arise after the sale are not, strictly speaking, questions relating to the execution, discharge, or satisfaction of the decree, within the meaning of cl. 3, s. 244; but as soon as there has been a sale, the execution of the decree, so far as the decree-holder is concerned, is over, and the question whether the purchaser has purchased anything by the sale is not a question as to the execution of the decree-holder's decree. Also *per Mahmood, J.*—The expression, "conducting the sale," as used in s. 311 of

the Civil Procedure Code, does not include any proceedings unconnected with the actual carrying out of the sale, but refers to the action of the officer who makes the sale, and not to anything done antecedent to the order of sale.—*Olpherts v. Mahabir Pershad* (L. R., 10 Ind. Ap. 26) referred to.—*Ramchhaibar Misr v. Bechu Bhagat*, I. L. R., 7 All. 641. [Mar. 21, 1885.]

Held that persons other than the decree-holders, or the persons whose property was sold in execution of decree, were not competent to apply to the Court under s. 311 of the Civil Procedure Code to set aside the sale. *M.*, in whose name property had been purchased at an execution sale which was improperly set aside, brought a suit to have the order setting aside the sale reversed, and the sale confirmed in her favour, and for a declaration that the property was not liable to be sold in execution of a decree of the defendants against third persons, under which it had been attached and advertised for sale. *Held* that such a suit could only be maintained under s. 42 of the Specific Relief Act (I. of 1877), but that s. 244 of the Civil Procedure Code indicated the intention of the Legislature that such questions should be determined in the execution department, and, reading together the provisions of ss. 244, 278, and 283 of the Code, the suit was premature, and therefore not maintainable.—*Man Kuar v. Tara Singh*, I. L. R., 7 All. 688. [Mar. 23, 1885.]

WHERE, certain property having been attached in execution of a decree, the representative of the judgment-debtor objected that the property had been acquired by himself and not inherited from the judgment-debtor, and was therefore not liable in execution, *held* that the question was one which must be decided in the execution department under s. 244 of the Civil Procedure Code.—*Ram Ghulam v. Hazaru Kuar* (I. L. R., 7 All. 647) referred to.—*Sita Ram v. Bhagwan Das*, I. L. R., 7 All. 733. [Mar. 30, 1885.]

THE defendant obtained a decree against the plaintiff as representative of his (the plaintiff's) deceased uncle, and in execution he attached the property in dispute. The plaintiff objected to the attachment, but his objection was disallowed, and the property was sold. The plaintiff did not appeal against the order disallowing his objection, but filed the present suit to establish his right. Both the lower Courts allowed the plaintiff's claim. On appeal by the defendant to the High Court, *held*, reversing the decree of the Courts below, that the plaintiff's suit was not maintainable. The question raised in the present suit was one which ought to have been taken in the execution proceedings in the former suit under s. 244 of the Civil Procedure Code (Act XIV. of 1882); and having been, as a fact, raised and decided against the plaintiff, he could not bring a separate suit.—*Nimbá Harishet v. Sitázim Páráji*, I. L. R., 9 Bom. 458. [April 6, 1885.]

A DECREE-HOLDER, having attached the property of his judgment-debtors in execution of the decree, obtained an order for sale of the attached property. Prior to sale, the judgment-debtors made an application to be declared insolvents, and obtained an order under Stat. 11 and 12 Vic., c. 21, s. 7, by which their property was vested in the Official Assignee. An application was then made by the Official Assignee to the Court in which the execution of the decree was pending, for the release of the property from attachment, and that the property might be made over to him. The Court dismissed the application. On appeal, the District Judge reversed the first Court's order. *Held* that the matter did not come before the Court of first instance under s. 49 of Stat. 11 and 12 Vic., c. 21, inasmuch as that section refers to cases where the insolvent's schedule has been filed, and to debts or demands admitted therein, and, in the present case, no schedule had been filed at the time of the Official Assignee's application; and the Court could, therefore, only entertain the application under the provisions of the Civil Procedure Code relating to the execution of decrees. *Held* that the Official Assignee could not be held to be a representative of the judgment-debtors within the meaning of s. 244 of the Civil Procedure Code, and his application was not one relating to the execution, discharge, or satisfaction of the decree. *Held* that the Court of first instance had only jurisdiction in the matter under s. 278 of the Code, and disposed of it under that section, and that the District Judge had no jurisdiction to entertain the appeal.—*Kashi Prasad v. Miller*, I. L. R., 7 All. 752. [April 16, 1885.]

IN execution of a decree by R, S, another creditor, claimed a rateable share of the proceeds realized. His claim was rejected. Pending an application to the High Court under s. 622 of the Code of Civil Procedure to set aside this order, the share claimed by S was detained in Court at his request. The High Court rejected the application of S, and R took out execution for the costs incurred therein and for interest on the sum detained in Court at the request of S. *Held* that the interest could not be awarded to R in execution of the decree for costs.—*Sanjivi v. Rámasámi*, I. L. R., 8 Mad. 494. [April 17, 1885.]

A DECREE obtained by a mortgagor, which declared that the mortgagee should deliver up possession on payment of the sum found due to him, and having been executed for three years, a purchaser of the equity of redemption sued the mortgagee to redeem. *Held* that this suit was not barred by the former decree, and that the plaintiff was entitled to redeem. *Sámi v. Somasundram* (I. L. R., 6 Mad. 119) approved. *Gán Sávant Bál Sávant v. Nárayan Dhond Sávant* (I. L. R., 7 Bom. 467) dissented from.—*Karuthasámi v. Jaganátha*, I. L. R., 8 Mad. 478. [April 27, 1885.]

IN 1879, D obtained a decree against S. S gave security for the satisfaction of the decree, whereupon D agreed not to take proceedings in execution. In breach of this agreement D in the same year applied for execution, and sold certain immoveable property belonging to S, of which K became the purchaser. K did not apply for possession until 1883, in which year he applied for and obtained possession of the property. S alleged that he then for the first time became aware of the sale, and that by the fraud of D & K he had been kept in ignorance of the execution-proceedings taken by D in breach of the above-mentioned agreement, and within thirty days after K obtained possession, he (S) applied for a reversal of the orders which had been passed in the aforesaid fraudulent proceedings. The Subordinate Judge held that the application was barred by art. 166 of sch. 2 of the Limitation Act (XV. of 1877), and referred the applicant to a separate suit to set aside the sale. On application to the High Court, *held* that a separate suit would not lie, and that the relief sought by S could only be obtained, at all events as against D, by an application under s. 244 of the Civil Procedure Code (Act XIV. of 1882). *Held* also that art. 166 of sch. 2 of the Limitation Act (XV. of 1877) did not apply. That article, as amended by s. 108 of Act XII. of 1879, only applies to applications made under s. 311 or s. 294 of the Civil Procedure Code seeking to set aside a sale on the ground of a material irregularity in publishing or conducting the sale, or on the ground that the decree-holder has purchased without the permission of the Court.—*Sukharám Govind Kale v. Dámodar Ákháram Gujar*, I. L. R., 9 Bom. 468. [April 20, 1885.]

THREE out of six decree-holders their share in the decree to A, who thereafter made an application to the Court under s. 232 of the Code of Civil Procedure. This application was dismissed on the ground that A's purchase was made *benami* for some of the judgment-debtors. In a subsequent suit brought by A and the persons who were said to be the real purchasers, it was contended that a separate suit was barred under the provisions of s. 244 (cl. c) of the Code of Civil Procedure. *Held* that A was not a party to the suit in which the decree was passed, nor the representative of any such party, and that the suit was not barred.—*Halodhar Shaha v. Harogobind Das Koibarto*, I. L. R., 12 Cal. 105. [July 4, 1885.]

B OBTAINED a decree on a settlement of accounts made with V as trustee of a mutt. V's title as trustee having subsequently been negatived by decree, and the title of S declared, B applied to execute his decree against the property of the mutt, and to have S substituted as party to the suit in place of V. The application was rejected by the Munsif, but on appeal the District Judge made S a party, and reserved for determination in execution proceedings the question whether the debt was contracted for the benefit of the mutt. *Held* that S was properly made a party, but that it was not open to him to raise this question in execution proceedings.—*Sudindra v. Budan*, I. L. R., 9 Mad. 80. [Sep. 4, 1885.]

THE word "representative" as used in cl. c, s. 244 of the Code of Civil Procedure, means any person who succeeds to the right of any of the parties to the suit after the decree is passed. A Hindu widow mortgaged certain properties, and afterwards by an *ekrarnamah* made them over to B, the next heir. The *ekrarnamah* contained a condition that B was to be liable for the widow's debts. Subsequently the mortgagee brought a suit against the widow on the mortgage, and joined B as a party, on the ground that he was in possession of the mortgaged properties. That suit resulted in a money-decree being passed on appeal by the High Court against the widow personally, the property in the hands of B being held not to be liable. The case was taken on appeal to the Privy Council, and pending the hearing of that appeal the widow died, and B was brought on the record as her legal representative. The decree of the High Court was ultimately confirmed by the Privy Council. In execution of the decree it was sought to make B liable to satisfy the amount out of the properties which he had obtained under the *ekrarnamah*, the mortgagee not having been aware of the conditions of the document before the decree of the High Court. *Held* that, so far as these properties were concerned, he was not the legal representative of the widow as he inherited them as heir-at-law of her husband, and that his title to them under the *ekrarnamah* was not that of a "representative" within the meaning of cl. c of s. 244. *Held*, further, that the question of B's liability under the *ekrarnamah* did not fall within the scope of the provisions of cl. c of s. 244 as being a question to be decided between the "parties" to the suit, as although B was a party to

the suit, the only claim against him was that the property in his hands was liable, as having been previously hypothecated, and as the suit was dismissed so far as that claim was concerned, it was not a question relating to the execution of the decree.—*Kameshwar Pershad v. Run Bahadur Singh*, I. L. R., 12 Cal. 458. [Jan. 14, 1886.]

UNDER ss. 244 (ol. c) and 258 of the Civil Procedure Code (Act XIV. of 1882) no compromise of a decree which has not been duly certified under the provisions of the last-mentioned section can be recognized by any Court, and a separate suit to enforce such compromise is not maintainable.—*Hormasji Dorabji Vantā v. Burjorji Jamsetji Vaniā*, I. L. R., 10 Bom. 155. [Jan. 21, 1886.]

THE provisions of s. 244 (c) of the Civil Procedure Code prohibit not only a suit between parties and their representatives, but also a suit by a party or his representatives against a purchaser at a sale in execution of the decree, the object of which is to determine a question which properly arises between the parties or their representatives, and relates to the execution, discharge, or satisfaction of the decree. A judgment-debtor, whose occupancy-tenure had been sold in execution of a decree for money, sued the purchaser for recovery of the property, on the ground that the sale of occupancy-rights in execution of decree was illegal and void, being in contravention of the provisions of s. 9 of Act XII. of 1881 (N. W. P. Rent Act). Held by the Full Bench that the question involved in the suit was one of the nature referred to in s. 244 (c) of the Civil Procedure Code as determinable only by order of the Court executing the decree, and that the suit was, therefore, not maintainable. *Narain v. Puran* (Weekly Notes, 1883, p. 218) referred to.—*Basti Ram v. Fattu*, I. L. R., 8 All. 146. [Jan. 21, 1886.]

ON an application under s. 232 of the Civil Procedure Code by the purchaser of a decree to be allowed to execute it, two of the judgment-debtors objected that the purchase was *benami* for the other judgment-debtor, and that they had paid off the decree to the original decree-holder. The Munsif found both objections against them, and allowed the purchaser to execute the decree. Held that the question was one between the parties to the suit or their representatives relating to the execution, discharge, or satisfaction of the decree, and that the decision of that question was a decree under ss. 2 and 244 of the Code, and therefore appealable, and a second appeal lay therefrom to the High Court.—*Afzal v. Ram Kumar Bhudra*, I. L. R., 12 Cal. 610. [Mar. 5, 1886.]

AN order under s. 243 of the Civil Procedure Code staying execution of a decree determines a question relating to the execution of the decree within the meaning of s. 244, and is, therefore, a decree within the meaning of s. 2. An appeal, therefore, lies from such order.—*Steel v. Ichohanoyi Chowdhrahi*, I. L. R., 13 Cal. 111. [Mar. 15, 1886.]

G INSTITUTED a suit against H, C, and P, which was dismissed with costs, but an appeal was preferred. Pending the appeal, however, C took out execution of the decree for costs, and brought to sale a house belonging to G, of which H became the purchaser, paid the purchase-money, and got possession. Subsequently the decision dismissing the suit was reversed on appeal, and the defendants in that suit were ordered to pay a certain sum to G with costs. G then applied for restitution of her house which had been sold under the decree reversed, and eventually obtained an unconditional order for possession—H being left to any remedy open to him in respect of the purchase-money. G having obtained possession of the house, H brought a suit against her to recover the purchase-money. Held that, notwithstanding s. 244 of the Civil Procedure Code, he was entitled in this suit to recover the purchase-money, as money received to his use, the consideration for it having failed. H was not, in his character as an auction-purchaser, a party to the execution-proceedings, and for the purpose of the suit was to be treated as a third person.—*Hira Lal Chatterjee v. Gourmonee Debi*, I. L. R., 13 Cal. 326. [July 26, 1886.]

THE decree-holder, under a decree for enforcement of lien against the zamfudari rights and interests of K, applied for execution by attachment and sale of certain shares, one of which was recorded in the *khewat* in the name of K, and two others in the name of B, his brother's widow. The shares having been attached, the judgment-debtor died, and J, his brother, and L, his son, were substituted as his representatives. In execution of the decree, only the share which had stood recorded in the name of the deceased judgment-debtor, and which was in possession of J and L as his representatives, was sold; and the decree-holder then applied for sale of the other shares which had been attached. To this B objected under s. 281 of the Civil Procedure Code, claiming to be the owner of the shares in question. Before the hearing of her objection she died, and L applied to have his name brought upon the record in her place for the purpose of supporting the objections. An order having been passed disallowing the objections which had been filed by B, L appealed to the High Court. A preliminary objection was taken on behalf of the decree-holder to the hearing of the appeal, on the ground that as the first Court's order related to L's claim, as the heir of B, to have the shares entered in her name released from

attachment, it must be regarded as passed under s. 281 of the Civil Procedure Code, and as conclusive, subject to L's bringing a suit to establish his right. On the other side it was contended that L, being the representative of the deceased judgment-debtor, K, the first Court's order must be regarded as passed under s. 244 of the Code, and the appeal would, therefore, lie. *Held* that the preliminary objection must prevail, and the first Court's order must be regarded as passed under s. 281, and not under s. 244 of the Code, inasmuch as L's claim, which was rejected by it, was nothing more than to come in as B's representative for the purpose of supporting her objections; and it was in right of a third person, whose interest he asserted to have passed to him, that he prayed admission to the proceedings, and this character was wholly distinct from that he filled as the legal representative of his deceased father. Because L happened, for the purpose of the execution-proceedings, to be his father's legal representative, and be liable to satisfy the decree to the extent of any assets which might have come to his hands, it did not follow that any rights by him through a third person must be dealt with, and could only be dealt with, between him and the decree-holder in the execution-proceedings. *Wahed Ali v. Jumara* (1 B. L. R. 149), *Ram Ghulam v. Hazaru Kuar* (I. L. R., 7 All. 547), *Sita Ram v. Bhagwan Das* (I. L. R., 7 All. 733), *Shankar Dial v. Amir Haidar* (I. L. R., 2 All. 752), *Nath Mal Das v. Tajammul Husain* (I. L. R., 7 All. 36), and *Kanai Lal Khan v. Sashi Bhuson Biswas* (I. L. R., 6 All. 777), referred to.—*Bahori Lal v. Gauri Sahai*, I. L. R., 8 All. 626. [Aug. 3, 1886.]

THE Court has power to award to a successful appellant interest upon an amount found on appeal to have been improperly levied in execution of a decree.—*Ayyaváyyar v. Shástram Ayyar*, I. L. R., 9 Mad. 506. [Aug. 20, 1886.]

R HAVING obtained a decree for money against K, the karnavan of the defendants, K died, and the defendants were made parties to the suit as representatives of K. Tarwad property was then attached by R, and the defendants having objected, the Court raised the attachment. R sued for a declaration that the property released was liable to be sold. *Held* that the suit was barred by s. 244 of the Code of Civil Procedure.—*Ravunni Menon v. Kunju Náyar*, I. L. R., 10 Mad. 117. [Nov. 4, 1886.]

THE parties to a suit agreed upon a compromise the result of which was that the plaintiff obtained by the decree a greater quantity of land than he had originally claimed, and a decree was drawn up in accordance with the compromise. In the execution-proceedings, the defendant raised an objection that the plaintiff could not have execution for a greater quantity of land than he had claimed originally, and the Court executing the decree allowed the objection. No appeal from the Court's order was made, but the plaintiff brought a suit to recover possession of the larger amount of land mentioned in the compromise. *Held* that the order of the Court executing the decree was erroneous in law, and might properly be reconsidered upon an application for review; but that the present suit came within s. 244 of the Civil Procedure Code, and, therefore, could not be maintained.—*Mohibullah v. Imami*, I. L. R., 9 All. 229. [Jan. 11, 1887.]

E.—Of the Mode of executing Decrees.

245. The Court, on receiving an application for the execution of a decree, shall ascertain whether such of the requirements of sections 235, 236, 237, and 238 as may be applicable to the case, have been complied with; and if they have not been complied with, the Court may reject the application, or may allow it to be amended then and there, or within a time fixed by the Court. If the application be not so amended, it shall be rejected.

Every amendment made under this section shall be attested by the signature of the Judge.

When the application is admitted, the Court shall enter in the register of the suit a note of the application and the date on which it was made, and shall order execution of the decree according to the nature of the application :

Provided that, in the case of a decree for money, the value of the property attached shall, as nearly as may be, correspond with the amount for which the decree has been made.

Extending to
Provincial S.
C. Courts.

Procedure on receiving application for execution of decree.

Procedure on admitting application.

On the 9th of April 1880, A applied for execution of a decree, which he had obtained against B. On the 20th of April 1880, the Judge of the Court, under the provisions of s. 245 of the Code of Civil Procedure, ordered the application to be amended within seven days. This order was disobeyed, but no order rejecting the application was asked for or passed. On the 11th of May 1880, the applicant prayed leave to make the amendment, which prayer was granted. *Held* that the order of the 11th of May 1880, granting leave to amend, was not *ultra vires* of the Judge, under the provisions of s. 245 of the Code of Civil Procedure.—*Kaminy Mohun Somoddar v. Gopal and another*, I. L. R., 8 Cal. 479. [Mar. 8, 1882.]

A DECREE-HOLDER, on the 8th July 1885, applied for execution of a decree dated the 10th July 1873, omitting to set out specifically in such application a description of the immovable property sought to be attached. On the 24th July he applied for and obtained one month's time to file a list of these properties; and on the 7th August, after filing the list applied for the attachment and sale of such properties. The judgment-debtor contended that execution was barred by limitation. *Held* that the omission to file on the 8th July the list describing specifically the properties sought to be attached was a mere defect of description which could be remedied under s. 245 of the Code of Civil Procedure by allowing an amendment to be made; and, further, that the two applications of the 8th and 24th July should be considered as one entire application dating from the date of the 8th July. *Syud Mahomed v. Syud Abedollah* (12 C. L. R. 279) followed.—*Macgregor (J. C.) v. Tarini Churn Sircar*, I. L. R., 14 Cal. 124. [Aug. 11, 1886.]

Extending to
Provincial S.
C. Courts.

246. If cross-decrees between the same parties for the payment of

money be produced to the Court, execution shall be taken out only by the party who holds a decree for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

If the two sums be equal, satisfaction shall be entered upon both decrees.

Explanation I.—The decrees contemplated by this section are decrees capable of execution at the same time and by the same Court.

Explanation II.—This section applies where either party is an assignee of one of the decrees, and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

Explanation III.—This section does not apply, unless the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other, and each party fills the same character in both suits; and

the sums due under the decrees are definite.

Illustrations.

(a.) A holds a decree against B for Rs. 1,000. B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this section.

(b.) A and B, co-plaintiffs, obtain a decree for Rs. 1,000 against C, and C obtains a decree for Rs. 1,000 against B. C cannot treat his decree as a cross-decree under this section.

(c.) A obtains a decree against B for Rs. 1,000. C, who is a trustee for B, obtains a decree on behalf of B against A for Rs. 1,000. B cannot treat C's decree as a cross-decree under this section.

S AND two other persons hold a decree for costs against M which did not specify the separate interests of each in the decree, and M held a decree for money against S alone, which he wished to treat as a cross-decree under (Act X. of 1877), s. 246. *Held* that the decree held by S and the other persons was not a decree between the same parties as the parties to the decree held by M, and that his decree could not be treated as a cross-decree under that section.—*Murli Dhar v. Parsotam Das*, I. L. R., 2 All. 91. [Nov. 28, 1878.]

In April 1877, M sued S for money, and on the 10th May 1877, S sued M for money, both suits being instituted in the same Court. In the meantime, on the 9th May 1877, B applied for the attachment of the money claimed by M in his suit, and obtained an order prohibiting M from receiving, and S from paying, any sum which might be found in that suit to be due by S to M. On the 23rd June 1877, M obtained a decree in his suit against S, and S obtained a decree in his suit against M, S's decree being for the larger sum. On the same day, under the provisions of s. 209 of Act VIII. of 1859, satisfaction for the smaller sum was entered on both decrees, and execution taken out of S's decree for so much as remained due. At the same time S objected to B's attachment, but his objection was disallowed. *Held*, in a suit by S against B to have the order disallowing his objection set aside, and the property and legality of the set-off above-mentioned established, regard being had to the provisions of s. 209 of Act VIII. of 1859, that the attaching order of the 9th May could have no operative effect, and that, even if B had followed up that order, and attached M's decree against S, that step would not have put him in a better position, for the same section being followed, and the decrees being essentially cross-decrees, that for the smaller sum became absorbed in the one for the larger, and attachment could not affect it.—*Bujiwan Lal v. Sukhraj Rai*, I. L. R., 2 All. 866. [April 30, 1880.]

S. 246 of the Civil Procedure Code is applicable to cross-decrees, and not to cross-claims under one decree. To make s. 247 of the Code applicable in the case of cross-claims under one decree, the parties entitled thereunder to recover from each other must hold the same character and possess identical rights of enforcing execution, and enforcement of the decree can only be refused, or satisfaction entered up, when this is the case. *Held*, therefore, where a decree for money of a Court of first instance directed that the money should be realisable from certain specific property of the defendant, and exempted his person and other property, and the lower Appellate Court modified this decree by extending it to the person of the defendant, and in second appeal the High Court set aside the lower Appellate Court's decree, and restored that of the first Court, directing that the costs of the defendant in the lower Appellate Court and in the High Court should be paid by the plaintiff, that, inasmuch as the plaintiff was only entitled to recover the judgment-debt due to him from the defendant from such specific property, whereas the defendant was entitled to recover the judgment-debt due to him from the plaintiff from his person and property, the provisions of s. 247 were not applicable.—*Kalka Prasad v. Ram Din*, I. L. R., 5 All. 272. [Jan. 17, 1883.]

A JUDGMENT-DEBTOR may set-off against the amount of the decree against him the amount of a decree which he has obtained against the decree-holder and other persons.—*Hury Doyal Guho v. Din Doyal Guho*, I. L. R., 9 Cal. 479. [Jan. 29, 1883.]

AN order passed under s. 246 of the Code of Civil Procedure, 1859, rejecting a claim after investigation, will, if not contested by suit by the claimant, estop him afterwards from pleading adverse possession at the date of the order in a suit brought to eject him by the decree-holder.—*Velayuthan v. Lakshmana*, I. L. R., 8 Mad. 506. [July 6, 1885.]

If a Court ordering a sale in execution of a decree has jurisdiction, a purchaser of the property sold is not bound to inquire into the correctness of the order for execution, any more than into the correctness of the judgment upon which the execution issues. Notwithstanding anything in s. 246 of the Code of Civil Procedure, he is not bound to inquire whether the judgment-debtor holds a cross-decree of higher amount against the decree-holder any more than he is to inquire, in an ordinary case, whether the decree, under which execution has issued, has been satisfied or not. These are questions to be determined by the Court issuing execution. Where property, sold in execution of a valid decree, under the order of a competent Court, was purchased *bona fide* and for fair value, *held* that the mere existence of a cross-decree for a higher amount in favour of the judgment-debtor, without any question of fraud, would not support a suit by the latter against the purchaser to set aside the sale.—*Rewa Mahton v. Ram Kishen Singh*, I. L. R., 14 Cal. 18. [July 9, 1886.]

247. When two parties are entitled under the same decree to recover from each other sums of different amounts, the party entitled to the smaller sum shall not take out execution against the other party; but satisfaction for the smaller sum shall be entered on the decree. Extending to Provincial S. C. Courts.

When the amounts are equal, neither party shall take out execution, but satisfaction for each sum shall be entered on the decree.

Extending to
Provincial S.
C. Courts.

248. The Court shall issue a notice to the party against whom execu-

tion is applied for, requiring him to show cause, Notice to show cause why the decree should not be executed, within a period to be fixed by the Court, why the decree should not be executed against him.

(a) if more than one year has elapsed between the date of the decree and the application for its execution, or

(b) if the enforcement of the decree be applied for against the legal representative of a party to the suit in which the decree was made :

Provido. :

Provided that no such notice shall be necessary,

in consequence of more than one year having elapsed between the date of the decree and the application for execution, if the application be made within one year from the date of any decree passed on appeal from the decree sought to be executed, or of the last order against the party against whom execution is applied for, passed on any previous application for execution, or

in consequence of the application being against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

Explanation.—In this section the phrase “the Court” means the Court by which the decree was passed, unless the decree has been sent to another Court for execution, in which case it means such other Court.

WHEN a judgment-debtor has died after decree, but before application has been made to execute the decree, the Court, before directing the attachment and sale of any property to proceed, must issue a notice to the party against whom the execution is applied for, to show cause why the decree should not be executed against him, and its omission to do so will invalidate the entire subsequent proceedings. A judgment having been obtained by A against B, and B having died before application was made for execution, A applied for execution of his decree upon a tabular statement, in which the judgment-debtor was stated to be C, widow of B, and C was also described as the person against whom execution was sought. Upon this application, the property mentioned in the tabular statement was directed to be attached and sold, and it was accordingly sold in execution, and purchased by A. No notice under s. 248 of the Civil Procedure Code had been served upon C before issue of execution. *Held* that the application was improper ; that the order for attachment and sale should not have been made ; and that the Court which made it should have set the execution aside as soon as it became aware that no notice had issued previous to its issue. The fact of there being no section in the Code expressly authorising a Court to set aside its proceedings is immaterial, as every Court has an inherent right to see that its process is not abused or does not irregularly issue, and may set aside all irregular proceeding as a matter of course, provided that the interests of third parties are not affected. *Seemle.*—Under s. 248, the fact that application to execute the decree had been made in the lifetime of B would make no difference, unless an order had been made and the property actually attached under it ; as whenever an application is made for execution against a legal representative of the judgment-debtor, the notice required by the section must be issued to him, unless the Court has already ordered execution to issue against him upon a previous application.—In the Matter of the Petition of Rameesuri Dassie ; Rameesuri Dassie v. Doorga Dass Chatterjee, I. L. R., 6 Cal. 103. [May 25, 1880.]

THE plaintiff obtained a decree in 1864. The first application for execution was made in September 1869, under s. 216 of the Civil Procedure Code (Act VIII. of 1859) ; and after notice to the defendant, as provided thereby, an order was made under that section for execution to issue. In September 1880, an application for execution was made under s. 230 of the Civil Procedure Code of 1877, which repealed Act VIII. of 1859. *Held* that the order after notice had the effect of reviving the decree within the meaning of art. 180, sch. 2, Act XV. of 1877, and therefore the decree was not barred by the law of limitation. An order for execution under the Code, made after notice to show cause, has, on the original side of the Court, the same effect as an award of execution in pursuance of a writ of *scire facias* had under the procedure of the Supreme Court—i. e., it creates revivor of the decree. The clause of s. 230 of Act X. of 1877,

which prohibits a subsequent application for execution; only applies where the previous application has been made under that section, and not where such previous application has been made under Act VIII. of 1859.—*Ashootosh Dutt v. Doorga Churn Chatterjee*, I. L. R., 6 Cal. 504. [Dec. 20, 1880.]

THE omission to give the notice required by s. 248 of Act X. of 1877 to the judgment-debtor on application for the execution of the decree affects the regularity of the sale which subsequently takes place in execution of the decree, and the validity of the entire execution-proceedings. *Ramesuri Dassee v. Doorgadass Chatterjee* (I. L. R., 6 Cal. 103) followed. *Held*, therefore, where execution of a decree was applied for against the legal representative of a deceased judgment-debtor, and the notice required by s. 248 of Act X. of 1877 was not given to such legal representative, and certain immoveable property belonging to the deceased judgment-debtor was sold, that such sale had been properly set aside by the Court executing the decree by reason of such omission. *Quere*.—Whether such omission was an irregularity in “publishing or conducting” the sale within the meaning of s. 311 of that Act.—*Imam-un-nissa Bibi v. Liaquat Husain*, I. L. R., 3 All. 424. [Jan. 10, 1881.]

WHERE an application to execute a decree of 1862 was made under s. 230 of the Code of Civil Procedure, 1877, on the 14th of December 1877, and a notice was issued to the judgment-debtor under s. 248, but no further steps were taken, *held* that a subsequent application, made within three years from that date, was not affected by the twelve years’ rule, as the last preceding application had not been granted within the meaning of s. 230.—*Chengaya v. Appasami*, I. L. R., 6 Mad. 172. [Aug. 4, 1882.]

ON the 4th March 1884, a decree-holder applied to the Court of the Subordinate Judge of Moorshedabad (where the decree was passed) for transfer of the decree to the District Court of Beerbhoom for execution. The transfer was made, and, on application by the decree-holder, the judgment-debtor’s properties in Beerbhoom were attached. Thereupon the judgment-debtor objected to the attachment, and obtained an order under s. 239 of the Code of Civil Procedure, staying the execution-proceedings. The judgment-debtor then applied to the Court of the Subordinate Judge at Moorshedabad objecting to the execution of the decree on the ground that it was barred by limitation. The objection was overruled by the Subordinate Judge; and his decision was upheld on appeal to the District Judge. On second appeal to the High Court, *held* that the Moorshedabad Court was competent to hear and determine the plea of limitation. *Held* also that the fact of the judgment-debtor’s not raising the plea of limitation in the Beerbhoom Court did not, under the circumstances, preclude him from relying on it in his subsequent application to the Court at Moorshedabad.—*Sriharay Mundul v. Murari Chowdhry*, I. L. R., 13 Cal. 257. [July 2, 1886.]

A, AND subsequently B, obtained decree against X, in execution of which the same land was attached, and B obtained an order for rateable distribution. Neither decree was satisfied. A then applied for attachment of other property, and the sale was fixed for 28th September. On 26th September B filed a petition for further attachment under ss. 250, 274, and also a petition for rateable distribution under s. 295 of the Code of Civil Procedure. The District Judge rejected the application for execution as being too late, and then the application under s. 295, because no application for execution was pending. *Held*, on appeal, that the petition for execution was wrongly rejected, but that the High Court could not, under s. 622 of the Code of Civil Procedure, revise the order rejecting the application under s. 295 for rateable distribution.—*Venkataraman v. Mahalingayyan*, I. L. R., 9 Mad. 508. [Aug. 4, 1886.]

249. If the person to whom notice is issued under the last preceding section does not appear, or does not shew cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed. Extending to Provincial S. C. Courts.

If he offers any objection to the enforcement of the decree, the Court shall consider such objection, and pass such order as it thinks fit.

250. When the preliminary measures (if any) required by the foregoing provisions have been taken, the Court, unless it sees cause to the contrary, shall issue its warrant for the execution of the decree. Ditto.

Warrant when to issue.

Extending to
Provincial S.
C. Courts.

251. Such warrant shall be dated the day on which it is issued, signed Date, signature, seal, and by the Judge or such officer as the Court appoints delivery. in this behalf, sealed with the seal of the Court, and delivered to the proper officer to be executed.

And a day shall be specified in such warrant on or before which it must be executed, and the proper officer shall endorse thereon the day and manner in which it was executed, or, if it was not executed, the reason why it was not executed, and shall return it with such endorsement to the Court from which it issued.

Ditto.

Decree against representative of deceased for money to be paid out of deceased's property.

252. If the decree be against a party as the legal representative of a deceased person, and the decree be for money to be paid out of the property of the deceased, it may be executed by the attachment and sale of any such property :—

If no such property remains in the possession of the judgment-debtor, and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property not duly applied by him, in the same manner as if the decree had been against him personally.

A, a Muhammadan, died possessed of immoveable property, and leaving a widow, a daughter, and a sister, B, his heiresses according to Muhammadan law. B was entitled to one-sixth share of an undivided moiety of a certain portion of the property which was situated in Calcutta. After A's death, the L. Bank sued his daughter and her husband and two of her husband's brothers in a Mufassal Court to realise certain mortgage-securities executed by A to the Bank, and obtained a decree by consent. Neither the widow, nor B, who was then absent from the country, were parties to this suit. The Bank, in execution of their decree, caused certain property of A, including the undivided moiety of the Calcutta property, to be sold by the Sheriff of Calcutta. The defendant became the purchaser at this sale, and obtained possession of the property. The certificate of sale stated that what was sold was "the right, title, and interest of A, deceased, the ancestor, and of the defendants (naming them), the representatives, in a moiety of a piece of land situate," &c. B afterwards sold and assigned her share in (among other properties) the above-mentioned undivided moiety of the Calcutta property to the plaintiff, who now sued the purchaser at the execution-sale to recover the subject of his purchase. *Held* by Garth, C.J., and Kemp and Jackson, JJ. (Markby and Ainslie JJ., dissenting), that the decree and the execution founded upon it did not affect the share of B in the estate of A, and consequently that the property in question did not pass to the defendant under the sale made by the Sheriff. *Per* Garth, C.J.—A decree by consent against one heir of a deceased debtor cannot, under the Muhammadan law, legally bind the other heirs. *Per* Markby, J.—Under the Muhammadan law, the estate of an intestate descends entire, together with all the debts due from and owing to the deceased. The creditor of an intestate Muhammadan must enforce his claim against the estate in a suit properly framed for the purpose. Such a suit is properly framed if all the persons in possession of that particular portion of the estate which it is intended to charge are made parties to it. The right of a Muhammadan heir claiming the property of his deceased ancestor who died indebted is a right of representation only, and, except as representative, he has no right to the property whatsoever. A person may be a representative within the meaning of s. 203 of Act VIII. of 1859 (corresponding with s. 252 of Act X. of 1877), so as to make the decree effectual for the purpose therein stated, although that person is not the heir.—*Assamatthem Nessa Bibee v. Roy Lutcheemput Singh*, I. L. R., 4 Cal. 112. [May 13, 1878.]

A PLAINTIFF is entitled to sue the legal representative of his deceased debtor and to obtain a decree against him, without proving that assets have come into his hands. It is sufficient if there are assets of which he may become possessed. The decree should mention that it is against the defendant in that character, and should be executed as directed by s. 252 of the Civil Procedure Code (Act XIV. of 1882). *Ráyáppá Chetti v. Ali Sáheb* (2 Mad. H. C. R. 336) followed.—*Girdharál v. Báí Shiv*, I. L. R., 8 Bom. 300. [Feb. 21, 1884.]

Extending to
Provincial S.
C. Courts.

253. Whenever a person has, before the passing of a decree in an original suit, become liable as surety for the performance of the same or of any part thereof, the decree may be executed against him to the extent to which he has rendered himself liable, in the same manner as a decree may be executed against a defendant :

Provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety.

IN consideration of the plaintiffs being allowed to proceed with the execution of a decree which they had obtained in the High Court, A became surety upon a bond for the payment of what might be due to the defendants by such plaintiffs in the event of their decree being reversed or modified by the Privy Council, to which an appeal was then pending. *Held* that the summary procedure under s. 204 of Act VIII. of 1859 might be enforced against A as such surety. Compare Act X. of 1877, s. 253.—*Chunder Kaut Mookerjee v. Ram Coomar Coondoo*, 3 C. L. R. 505. [Dec. 19, 1878.]

AN appeal was preferred to the Privy Council from a final decree passed upon appeal by the High Court, and B and certain other persons on behalf of the appellant gave security for the costs of the respondent. The Privy Council dismissed the appeal, and ordered the appellant to pay the costs of the respondent. The respondent applied to the Court of first instance for the execution of that order against B and the other persons as sureties. *Held* that under Act X. of 1877, ss. 610 and 253, such order could be executed against the sureties.—*Bans Bahadur Singh v. Mughla Begam*, I. L. R., 2 All. 604. [Jan. 3, 1880.]

A JUDGMENT-DEBTOR, whose property was about to be sold, appeared before the officer appointed to conduct the sale, and applied for its postponement, producing a surety and a bond, in which such surety promised to pay the amount of the decree within one year, if the judgment-debtor did not do so. Such officer thereupon applied to the District Judge to postpone the sale, stating that such surety was willing to pay the amount of the decree by instalments within one year, and forwarding such bond. The District Judge ordered the sale to be postponed, and the papers to be sent to the Munsif who had made the decree and ordered the sale of the property. The Munsif made no order regarding the security, but merely made an order that the amount of the decree should be paid by instalments within one year. The judgment-debtor did not pay the amount of the decree within the time fixed, and the decree-holder therefore applied for execution of the decree against such surety. *Held* that, inasmuch as the decree-holder had not been a party to the proceedings of the sale-officer or of the District Judge, and as the parties had not appeared before the Munsif, and as such surety had not agreed to pay the amount of the decree by instalments, the provisions of s. 210 of Act X. of 1877 were not applicable, and such surety had not become a party to the decree as altered by the Munsif; that such surety had not made himself a party to the decree by promising to pay its amount within one year; and that therefore his liability was not one which could be enforced in execution of the decree under s. 253 of Act X. of 1877.—*Chandan Kuar v. Tirkha Ram*, I. L. R., 3 All. 809. [May 17, 1881.]

IN 1874 the execution of the decree of an Appellate Court was stayed pending an application for review of judgment, upon the judgment-debtor giving security for the execution of the decree, and a surety was accepted on his behalf. *Held* that the judgment-creditor could not proceed summarily against the surety under the provisions of s. 253 of the Code of Civil Procedure, 1882.—*Báláji v. Rámasámi*, I. L. R., 7 Mad. 284. [Oct. 19, 1883.]

A PLAINTIFF, having preferred an appeal to Her Majesty in Council, was called upon to furnish security. Thereupon A, on behalf of appellant, executed a security-bond for the costs of the respondent. The appeal was dismissed with costs by Her Majesty in Council. On an application (by the respondent in the appeal) for execution to issue against the estate of A, the surety (who had died in the meantime), *held* that the liability of the surety under the security-bond could not be enforced in execution of the decree of Her Majesty in Council. *Bans Bahadur Singh v. Mughla Begum* (I. L. R., 3 Mad. 107) dissented from.—*Radha Pershad Singh v. Phuljuri Koer*, I. L. R., 12 Cal. 402. [July 3, 1885.]

S. 253 of the Civil Procedure Code contemplates a suit pending at the time security is given for performance of the decree, and does not apply to a case where the litigation in the Courts of first instance and of first appeal has ended, and no second appeal has been

instituted in the High Court when security is given. The holder of a decree affirmed on appeal by the District Court took out execution to recover costs awarded. Costs were deposited by the judgment-debtor and paid to the decree-holder, and a surety gave a bond by which he undertook to refund the amount to the judgment-debtor in the event of the latter succeeding in appeal to the High Court and of the decree-holder failing to repay him. The judgment-debtor subsequently filed an appeal to the High Court and was successful, and he then applied in the execution-department to recover the amount from the surety. *Held* that the Court executing the High Court's decree had no jurisdiction to execute it against the surety.—*Hardeo Das v. Zaman Khan*, I. L. R., 8 All. 639. [Aug. 8, 1886.]

Extending to
Provincial S.
C. Courts.

254. Every decree or order directing a party to pay money as compensation or costs, or as the alternative to some other relief granted by the decree or order, or otherwise,

may be enforced by the imprisonment of the judgment-debtor, or by the attachment and sale of his property in manner hereinafter provided, or by both.

A SUIT on a bond in which immoveable property was hypothecated was adjusted by the defendant agreeing to pay the amount claimed and costs, with interest, by instalments within a fixed time, and that, in the event of default, the plaintiff should be at liberty to bring such property to sale. The Court made a decree ordering the defendant to pay the plaintiff the amount claimed and costs, with interest, "in accordance with" such agreement. *Held* (Turner, J., and Oldfield, J., dissenting) that such decree was a mere money-decree, and not one which gave the plaintiff a lien on such property.—*Janki Prasad v. Baldeo Narain*, I. L. R., 3 All. 216. [June 30, 1876.]

A REGULARLY perfected attachment is an essential preliminary to sales in execution of simple decrees for money, and where there has been no such attachment any sale that may have taken place is not simply voidable, but "*de facto*" void.—*Mahadeo Dubey v. Bhola Nath Dichit*, I. L. R., 5 All. 86. [Aug. 23, 1882.]

Ditto.

255. If the decree be for mesne-profits or any other matter, the amount of which in money is to be subsequently determined, the property of the judgment-debtor may, before the amount due from him under the decree has been ascertained, be attached as in the case of

Decree for mesne-profits or other matter, amount of which to be subsequently ascertained.

an ordinary decree for money.

WHEN, in a suit for possession of land and mesne-profits at a rate stated in the plaint, a decree is passed which directs that the amount of mesne-profits be ascertained in execution of the decree, the plaintiff is not limited to the amount or rate stated in his plaint, though it may be used as evidence against him in favour of the defendant. *Baboojan Jha v. Byjnath Dutt Jha* (I. L. R., 6 Cal. 472; 7 C. L. R. 539) explained.—*Gauri Prasad Koondoo v. Reily*, I. L. R., 9 Cal. 112. [May 11, 1882.]

Ditto.

256. When a decree is passed for a sum of money only, and the amount decreed does not exceed the sum of one thousand rupees, the Court may, when passing the decree, on

Power to direct immediate execution of decree for money not exceeding Rs. 1,000.

the oral application of the decree-holder, order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court, or against his moveable property within the same limits.

Ditto.

Modes of paying money under decree.

257. All money payable under a decree shall be paid as follows (namely)—

- (a) into the Court whose duty it is to execute the decree; or
- (b) out of Court to the decree-holder; or
- (c) otherwise as the Court which made the decree directs.

HELD, following *T. D. Bandyopadhyaya v. B. L. Mukhopadaya* (I. L. R., 12 Cal. 608) (Tyrrell, J., doubting), that an application made by a decree-holder, the object of which is that the receipt of certain sums of money paid out of Court may be certified, is a "step

in aid of execution," such as will keep the decree alive, within the meaning of the Limitation Act (XV. of 1877), sch. 2, No. 179 (4). *Gunsham v. Mukh* (I. L. R., 3 All. 320) referred to.—*Muhammad Husain Khan v. Ram Sarup*, I. L. R., 9 All. 9. [July 12, 1886.]

257A. Every agreement to give time for the satisfaction of a judgment-debtor. debt shall be void, unless it is made for consideration and with the sanction of the Court which passed the decree, and such Court deems the consideration to be under the circumstances reasonable. Extending to Provincial S. C. Courts.

Every agreement for the satisfaction of a judgment-debt, which provides for the payment, directly or indirectly, of any sum in excess of the sum due or to accrue due under the decree, shall be void, unless it is made with the like sanction.

Any sum paid in contravention of the provisions of this section shall be applied to the satisfaction of the judgment-debt; and the surplus (if any) shall be recoverable by the judgment-debtor.

On the 27th August 1878, the holder of a decree for money and the judgment-debtor agreed that the amount of the decree should be payable by instalments, and that, if default were made in payment of any one instalment, the whole decree should be executed. The Court executing the decree sanctioned this agreement. On the 28th November 1881, default having been made, the decree-holder applied for recovery of the whole amount of the decree. *Held* that the application was not one to which art. 179, sch. 2 of the Limitation Act, 1877, was applicable, but art. 178, and the period of limitation began to run from the date of default. The principle recognized in *Raghubans Gir v. Shaoaran Gir* (I. L. R., 5 All. 243) and *Kalyanbhai Dipchand v. Ghunashamlal Jadunathji* (I. L. R., 5 Bom. 29) applied.—*Sham Karan v. Piari*, I. L. R., 5 All. 596. [May 18, 1881.]

THE provisions of s. 257A of the Code of Civil Procedure, 1877, apply only as between parties to the decree.—*Yella v. Munisami*, I. L. R., 6 Mad. 101. [Nov. 10, 1882.]

THE decree-holder and judgment-debtor of a decree filed a petition, "*sulehnama*," in the Court executing the decree, praying that the Court would sanction an arrangement providing for the payment of the decree by instalments, and enhancing the rate of interest made payable by the decree. The Court sanctioned the arrangement. *Held* that the "*sulehnama*" was within s. 257A of the Civil Procedure Code, and the decree might be executed in accordance with its provisions.—*Sita Ram v. Dasrath Das*, I. L. R., 5 All. 492. [Mar. 6, 1883.]

G, THE father of the plaintiff, obtained two decrees—one against the defendant A and his father, and the other against A's father alone—and in satisfaction of these decrees obtained a bond without the sanction of the Court, and brought a suit to recover the sum due under the said bond. *Held* that the bond was void under the second clause of s. 257A of the Civil Procedure Code (Act XIV. of 1882).—*Ganesh Shivram v. Abdullahag*, I. L. R., 8 Bom. 538. [June 19, 1884.]

THE parties to a decree for money, dated the 14th July 1871, entered into a compromise, whereby, in lieu of a portion of the decretal money, the decree-holder was placed in possession of certain property, and the remainder of the decretal money was to be paid by fixed annual instalments, and in case of default in the payment of any instalment, it was agreed that the entire amount should become immediately realizable by execution of the decree. On the 11th December 1882, the decree-holder, alleging default in payment of the instalments, applied for execution of the compromise. *Held* that such an agreement could not be treated as an instalment-decree, and, as such, capable of execution. *Debi Rai v. Goka Prasad* (I. L. R., 5 All. 585) followed.—*Ramlakhon Rai v. Bakhtaur Rai*, I. L. R., 6 All. 623. [July 11, 1884.]

AN agreement entered into to pay interest not awarded by a decree in addition to the sum decreed without the sanction of the Court which passed the decree is void under section 257A of the Code of Civil Procedure (Act XIV. of 1882), so far as it operates in satisfaction of the judgment-debt. When the void part of an agreement can be properly separated from the rest, the latter does not become invalid; but where the parties themselves treat debts—void as well as valid—as a lump sum, the Court will regard the contract as an integral one, and wholly void, upon which neither the principal nor the surties can be sued.—*Davalatsingh v. Pandu*, I. L. R., 9 Bom. 176. [Nov. 28, 1884.]

THE provisions of s. 257A of Act XIV. of 1882 are intended to prevent binding agreements between judgment-debtors and judgment-creditors for extending the time for enforcing decrees by execution, without consideration, and without the sanction of the Court; and are not intended to prevent the parties from entering into a fresh contract for the payment of the judgment-debt by instalments or otherwise.—*Jhavar Mahomed v. Modan Sonahar*, I. L. R., 11 Cal. 671. [June 23, 1885.]

ON the 22nd March 1886, the applicant presented an application to a Subordinate Judge, praying that the adjustment of certain decrees, dated the 28th March 1887, and 11th July 1871, might be certified, and a sanction granted to a *sankhat*, dated 18th March 1880, passed to him by the defendant in satisfaction of the said decrees and on substitution of two bonds dated February 1879. The Subordinate Judge, being of opinion that the application could not be granted, inasmuch as the execution of the decrees was then barred by limitation, referred the case to the High Court under s. 617 of the Civil Procedure Code (Act XIV. of 1882). *Held* that the question could not be referred under s. 617 of the Civil Procedure Code (Act XIV. of 1882) as the order applied for to the Subordinate Judge was appealable under s. 2 of the Code. The question raised by the application related to the satisfaction of the decree within the meaning of s. 244 of the Code.—*Rangji v. Harjivan*, I. L. R., 11 Bom. 57. [July 22, 1886.]

Extending to
Provincial S.
C. Courts.

258. If any money payable under a decree is paid out of Court, or the

Payment to decree-holder.

decree is otherwise adjusted in whole or in part to the satisfaction of the decree holder, or if any payment is made in pursuance of an agreement of the nature mentioned in section 257A, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree.

The judgment debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after due service of such notice, the decree-holder fails to appear on the day fixed, or, having appeared, fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

No such payment or adjustment shall be recognized by any Court unless it has been certified as aforesaid.

N, HAVING obtained a decree in a suit against K, requested him to discharge certain sums due on outstanding bonds which N had given to third parties, promising to credit the sums so paid to the amount due under the aforesaid decree. K paid as requested, but N took out execution in full of the decree, and the Court refused to recognize the payments made by K out of Court. In a suit by K for the money paid as aforesaid, *held* that the payments not having been made directly in adjustment of a decree, the suit was not barred.—*Kunhi Moidin Kutti v. Ramenunni*, I. L. R., 1 Mad. 203. [Feb. 15, 1876.]

A DECREE-HOLDER, who, although he has settled with his judgment-debtor out of Court, yet nevertheless sues out execution against him, will be liable to an action for damages at the hands of the judgment-debtor. S. 244 or s. 258 of Act X. of 1877 have made no change in the law in this respect.—*Guni Khan v. Koonjo Behary Sein*, 3 C. L. R. 414. [Aug. 14, 1878.]

WHERE a judgment-debtor has, out of the Court, partly satisfied his decree-holder subsequent to the transmission of the decree for execution to another Court, but before actual execution has been applied for, he is entitled, on execution in full being demanded, to an order from the Court to which the decree is transferred for execution, calling upon the decree-holder to certify the fact of such part-payment.—*Rajendronath Roy Bahadur v. Chunnoomul and Kalee Churn Lahoree*, I. L. R., 5 Cal. 448. [Dec. 10, 1879.]

THE provisions of s. 206 of the Civil Procedure Code (Act VIII. of 1859) only prevent the Court executing the decree from recognizing a payment made out of Court, and do not bar a suit for the refund of such payment. G held a decree against D, who satisfied it out of Court, and obtained a receipt from G to the effect that it was satisfied. Notwithstanding this, G executed the decree, and recovered the amount of it through the Court, although D pleaded satisfaction in the execution-proceedings, and produced the receipt. In a suit brought by D against G for refund of the money received by G out of Court, the defendant contended that the suit was not maintainable. *Held* that it was maintainable according to the law as it stood before the passing of Act XII. of 1879. *Gunamani v.*

Paran Kishore (5 B. L. R. 223) and *Gulawad v. Rahimtulla* (4 Bom. H. C. R. 76) followed. *Quere.*—Whether such a suit is maintainable under s. 36 of Act XII. of 1879, which has been substituted for s. 258 of the Civil Procedure Code (Act X. of 1877). *Held* also that the statement contained in the receipt passed by G to D, to the effect that the decree had been satisfied, was sufficient to shift the burden of proof to the defendant to show that it was an incorrect statement.—*Davalata v. Ganesh Shastri*, I. L. R., 4 Bom. 295. [Feb. 3, 1890.]

M, who held a decree against S for possession of certain immoveable property and costs, assigned such decree to S by way of sale, agreeing to deliver the same to him on payment of the balance of the purchase-money. He subsequently applied for execution of decree against S, claiming the costs which it awarded. S thereupon paid the amount of such costs into Court, and, having obtained stay of execution, sued M for such decree, claiming by virtue of such assignment. The lower Court held that the suit was barred by the provisions of s. 244 of Act X. of 1877, and also, treating such assignment as an uncertified adjustment of such decree, that it was barred by the terms of the last paragraph of s. 258 of that Act. *Held* that the suit was not barred by anything in either of those sections. The words "any Court" in the last paragraph of s. 258 refer to proceedings in execution and to the Court or Courts executing a decree.—*Sita Ram v. Mahipal*, I. L. R., 3 All. 533. [Feb. 21, 1881.]

S, ALLEGING that a money-decree against him, held by G, had been adjusted out of Court by a payment in cash and delivery of certain property, and that M had, notwithstanding such adjustment, applied for execution of such decree, and recovered the amount thereof, as the Court executing such decree had refused to determine whether it had been satisfied on the ground that such adjustment had not been certified, sued M for the money which he had paid him out of Court. *Held* that the suit was not barred by the provisions of s. 244 of Act X. of 1877, or s. 258 of that Act. The last paragraph of s. 258 means that the Court executing the decree shall not recognize an uncertified payment or adjustment out of Court. It does not prohibit a suit for money paid to a decree-holder out of Court, and the payment of which, not being certified, could not be recognized, and which the decree-holder had not returned, but had misappropriated, by taking out execution of the decree a second time, and securing the amount in full through the Court.—*Shadi Ganga Sahai*, I. L. R., 3 All. 538. [Feb. 23, 1881.]

AN adjustment of a decree not certified to the Court by either party within the time limited by law cannot be recognized as a bar to execution.—*Chegumbara Rillai v. Ratna Ammal*, I. L. R., 3 Mad. 113. [Mar. 1, 1881.]

IN 1878, a decree-holder, having received certain grain from the judgment-debtor in satisfaction of the decree, failed to certify satisfaction of the decree to the Court in accordance with the provisions of s. 258 of the Code of Civil Procedure, 1877, and executed the decree nevertheless. In a suit for damages against the decree-holder it was held that the judgment-debtor's remedy for the wrong suffered was not taken away by the provisions of ss. 244 and 258 of the Code.—*Víraraghava Reddi v. Subbakká*, I. L. R., 5 Mad. 397. [May 11, 1881.]

WHERE a decree-holder, declared to be entitled to possession of certain lands, subsequent to decree executed a pattá in favour of his judgment-debtor, who was then in possession, and afterwards took out execution under his decree, *held* (on an objection by the judgment-debtor that, under these circumstances, he was entitled to possession) that satisfaction of the decree not having been entered up, such objection could not be dealt with under s. 244 of the Civil Procedure Code. *Held* also that s. 258 of the Civil Procedure Code deals with the adjustment of any decree, and not merely with the adjustment of a money-decree.—*Baba Mohamed v. Webb*, I. L. R., 6 Cal. 786. [July 19, 1881.]

A SUIT for the recovery of money paid to a judgment-creditor out of Court in satisfaction of a decree, but not certified, is barred by s. 244 (c) of Act X. of 1877, and by the last paragraph of s. 258 as amended by Act XII. of 1879.—*Pátankar v. Devji*, I. L. R., 6 Bom. 146. [Jan. 24, 1882.]

CERTAIN immoveable property having been attached in execution of a decree for money, dated in 1879, directing the sale of such property, T, who had purchased such property in 1880, objected to the attachment. His objection having been disallowed, he sued to establish his right to the property and for the removal of the attachment. He claimed on the ground, amongst others, that the decree of 1879 had been wifolly adjusted. The alleged adjustment had not been certified under s. 258 of the Civil Procedure Code. *Held* that the provisions of that section did not debar the Courts trying the suit from determining as between T and the decree-holder whether the decree of 1879 had been adjusted or not. *Sita Ram v. Mahipal* (I. L. R., 3 All. 533) and *Shadi v. Ganga Sahai* (I. L. R., 3 All. 538) followed.—*Tegh Singh v. Amin Chand*, I. L. R., 5 All. 269. [Jan. 12, 1883.]

ON an application for execution for the full amount due under a decree by some of several joint decree-holders, the judgment-debtor objected to execution being granted for the full amount of the decree on the ground that he had already paid off a large portion of the money due under the decree to B, one of the joint decree-holders. The payment was made out of Court, but B, who claimed to be entitled to a 12½-anna share in the decree, certified the payment in the manner prescribed by s. 258 of the Civil Procedure Code (Act XIV. of 1882), and represented that his claim had been satisfied in full. The other joint decree-holders denied B's right to the 12½-anna share claimed by him, and refused to recognize the payment said to have been made to him. The lower Court disallowed the objection, and granted execution for the full amount of the decree. *Held* that, regard being had to the provisions of the General Clauses Act (I. of 1868), the word "decree-holder" in s. 258 of Act XIV. of 1882 should be read in the plural, and looking at the provisions of s. 231 of the later Act, the Court ought not to recognize payments made out of Court, unless made and certified for the benefit of all the joint decree-holders of any portion of the decree in excess of that to which the decree-holder so paid is undisputedly entitled. *Held* also that a judgment-debtor is entitled to credit for any sum paid *bond fide* to one of several joint decree-holders, and duly certified to the Court by the latter, and that the other joint decree-holders cannot execute the decree for more than their own share. *Held* further that in this case the lower Court was wrong in wholly ignoring the payment certified by the decree-holder B, and that it should have determined, *first*, whether the payment to B was a fraud on the other joint decree-holders; and, *secondly*, what amount the latter were entitled to have out of the whole decree, the latter being the main question between the applicants for execution and the judgment-debtor, and, as such, clearly within the scope of s. 244 of the Civil Procedure Code. See *Ranee Nyna Koor v. Doolee Chund* (22 W. R. 77), *Brojeswari Chowdhranee v. Tripoora Soonderee Debi* (3 C. L. R. 513), and *Mahima Chandra Roy v. Prari Mohan Chowdhry* (2 B. L. R., Ap. 43).—*Tarruck Chunder Bhuttacharjee v. Divendro Nath Sanyal*, I. L. R., 9 Cal. 831. [April 5, 1883.]

THE holder of a money-decree agreed to accept, in satisfaction of the amount thereof, a part-payment in cash, and a lease of certain lands for five years, rent-free. The judgment-debtor made the payment, and gave the lease agreed on. Afterwards the decree-holder executed the decree against the judgment-debtor, and then the judgment-debtor brought the present suit for a declaration that the money-decree was satisfied, and for damages against the decree-holder. *Held* that such a suit would lie. *Gunamani Dasi v. Prankishori Dasi* (5 B. L. R. 223), *Viraraghava Reddi v. Subbaka* (I. L. R., 5 Mad. 397), *Chembrakandi Musutti v. Themdyal Puthulath Shekharan Nayar* (I. L. R., 6 Mad. 41), *Sita Ram v. Mahipal* (I. L. R., 3 All. 533), *Shadi v. Gunga Sahai* (I. L. R., 3 All. 538), and *Ishan Chunder Bundopadhyay v. Indro Narain Gossami* (I. L. R., 9 Cal. 788), followed; *Patankar v. Devji* (I. L. R., 6 Bom. 146) not followed.—*Poromanand Khasnabish v. Khepoo Paramanick*, I. L. R., 10 Cal. 354. [Jan. 30, 1884.]

THE plaintiff held a decree against the defendant, and in execution of it attached the defendant's property. A compromise was then made, by which the defendant executed to the plaintiff the bond sued upon, in satisfaction of the judgment-debt. The compromise, however, was not certified to the Court. *Held* that the bond was without consideration. The adjustment of the decree, not having been certified to the Court, was not binding on the plaintiff, and therefore constituted no valid consideration.—*Pándurang Rámchandra v. Náráyan*, I. L. R., 8 Bom. 300. [Feb. 7, 1884.]

THE provision in s. 258 of the Code of Civil Procedure, 1882, which forbids any Court to recognize a payment under, or an adjustment of, a decree, unless certified to the Court executing the decree, does not debar a suit for damages for a breach of a contract to certify.—*Mallamma v. Venkappa*, I. L. R., 8 Mad. 277. [Dec. 20, 1884.]

A DECREE passed against the defendant in a suit, dated the 13th March 1877, directed "that the plaintiff should recover the decree-money by instalments agreeably to the terms of the deed of compromise, and he, in case of default, should recover in a lump sum." The compromise mentioned in the decree provided that the amount in dispute should be paid in ten instalments, from 1284 to 1294 fasli the first to be paid on the 27th May 1877 (1284 fasli), and the remaining nine instalments on Jaith Paramashi of each succeeding fasli year. On the 1st September 1883, the decree-holders applied for execution of the decree, alleging that the first four instalments had been paid, but not any of the succeeding instalments; and they claimed to recover, under the terms of the decree, the fifth and all the remaining instalments in a lump sum. The judgment-debtors contended that the application was barred by limitation, as they had not paid a single instalment, and more than three years had elapsed from the date of the first default; and that, even if the first four instalments had been paid, such payments could not be recognized by the Court, as they had not been certified. *Held*, reversing the decision of the lower Appellate Court,

that if the four annual instalments had not been paid under the decree, the execution of the decree was barred by limitation. *Held* also that recognition of such instalment was not barred by the terms of s. 258 of the Civil Procedure Code. *Sham Lal v. Kanahia Lal* (I. L. R., 4 All. 316) and *Fakir Chand Bose v. Madan Mohan Ghose* (4 B. L. R. 130) followed.—*Zahur Khan v. Bakhtawar*, I. L. R., 7 All. 327. [Jan. 7, 1885.]

In determining under s. 258 of Act XIV. of 1852 whether or no the cause shown by the decree-holder is sufficient, it is incumbent upon the Court to investigate and decide any questions of fact upon which the parties may not be agreed.* In such an investigation the evidence may be given either orally or by affidavit. The term "to show cause" does not mean merely to allege causes, nor even to make out that there is room for argument, but both to allege cause and to prove it to the satisfaction of the Court.—*Bung Lal v. Hem Narain Gir*, I. L. R., 11 Cal. 166. [Jan. 7, 1885.]

In the course of proceedings in execution of a decree, dated the 14th June 1878, the parties, on the 11th January 1881, entered into an agreement, which was registered, and filed in the Court executing the decree. The deed recited that the decree was under execution, and that a mortgage-bond, dated the 1st December 1873, in favour of the judgment-debtor by a third party, had been attached and advertised for sale, and that the decree-holder and judgment-debtor had arranged the following method of satisfying the decree: that the judgment-debtor should make over the said bond to the decree-holder, in order that he might bring a suit thereon at his own expense against the obligor, and realize the amount secured by the bond, and out of the amount realized satisfy the decree under execution, with costs and future interest, together with all costs of the suit to be brought against the obligor, and together with a sum due by the judgment-debtor to the decree-holder under a note of hand for Rs. 250 with interest; and other details which need not be stated. On the same day that deed was executed, the decree-holder filed a petition in the Court, to the effect that under the agreement an arrangement had been made for payment of the judgment-debt, by which the judgment-debtor made over to him the bond advertised for sale, in order that the petitioner should file a suit under it at his own cost against the obligor, and realize the debt due under the decree in execution with interest and costs; and he prayed that the sale to be held that day might be postponed, and the application for execution struck off for the present, and the previous attachment maintained, and stating that, after realization of the amount entered in the bond advertised for sale, an application for execution would be duly filed. On this the order was that the execution-case be struck off the file, and the attachment maintained. On the 24th December 1883, the decree-holder applied for execution of the decree, alleging that the judgment-debtor had failed to make over the bond to him according to the agreement. The judgment-debtor objected that the decree was no longer capable of execution, having been superseded by the agreement of the 11th January 1881, and that the application was barred by limitation, the previous application being dated the 9th November 1880. *Held* that the application was within time, inasmuch as the acknowledgment in the deed of the 11th January 1881 came within the terms of s. 19 of the Limitation Act, so as to originate a fresh period of limitation in respect of the execution of the decree. *Ghan-sham v. Mukha* (I. L. R., 3 All. 320), *Janki Prasad v. Ghulam Ali* (I. L. R., 5 All. 201), and *Ramhit Rai v. Satgur Rai* (I. L. R., 3 All. 217), followed. *Per* Oldfield, J.—That the agreement of the 11th January 1881 did not contemplate, and had not the effect of cancelling the decree and substituting for it a new contract, inasmuch as the deed contained nothing to the effect that the decree was superseded; and all it did was to provide means by which the decree, together with another small sum due by the judgment-debtor to the decree-holder, might be satisfied without having recourse to the sale of the bond attached, and the effect would be that, on realization, satisfaction would be certified in whole or in part to the Court executing the decree. Further, if the agreement was to be regarded as within the meaning of an adjustment of the decree under s. 258 of the Civil Procedure Code, it could only be recognized by the Court when certified by the decree-holder or judgment-debtor: and, in this case, the only certification which was made was by the decree-holder by his petition of 11th January 1881, which was in respect of a temporary arrangement under which the decree remained in force. *Per* Mahmood, J.—That the agreement of the 11th January 1881 was intended by the parties as a performance of the obligation created by the decree by substituting a fresh obligation founded upon contract, but that the deed could not be regarded as such an adjustment of the decree as satisfied the requirements of s. 258 of the Civil Procedure Code, because the creditor, whilst admitting the creation of a separate contract, took care to say that the decree was to be kept alive, and the attachment thereunder was to subsist; and that therefore the certification of the adjustment was inadequate, and could not be recognized in executing the decree.—*Fateh Muhammad v. Gopal Das*, I. L. R., 7 All. 424. [Feb. 2, 1885.]

THE provisions of s. 257A of Act XIV. of 1882 are intended to prevent binding agreements between judgment-debtors and judgment-creditors for extending the time for enforcing decrees by execution, without consideration, and without the sanction of the Court; and are not intended to prevent the parties from entering into a fresh contract for the payment of the judgment-debt by instalments or otherwise.—*Jhabar Mahomed v. Modan Sonahar*, I. L. R., 11 Cal. 671. [June 23, 1885.]

S. 258 of the Code of Civil Procedure, which provides that no payment or adjustment of a decree not certified to the Court, as in the said section provided, shall be recognized by any Court, does not debar a Criminal Court from recognizing such payment where the decree-holder is charged with fraudulently executing a satisfied decree.—*Queen-Empress v. Pillala*, J. L. R., 9 Mad. 101. [Oct. 6, 1885.]

UNDER ss. 244 (cl. c) and 258 of the Civil Procedure Code (Act XIV. of 1882) no compromise of a decree which has not been duly certified under the provisions of the last mentioned section can be recognized by any Court, and a separate suit to enforce such compromise is not maintainable.—*Hormasji Dorabji Vaniá v. Burjorji Jamsetji Vaniá*, I. L. R., 10 Bom. 155. [Jan. 21, 1886.]

THE rule of Civil Procedure contained in the last clause of s. 258 of the Civil Procedure Code (Act XIV. of 1882)—that uncertified adjustments of a decree are not to be recognized by “any Court”—does not affect the substantive criminal law. The words “any Court” in that clause have no application to a Criminal Court investigating a charge of fraudulently executing a decree under s. 210 of the Indian Penal Code (Act XLV. of 1860). Those words do not bar any criminal remedy which an injured judgment-debtor may have against a fraudulent decree-holder, whether by a prosecution under ss. 193, 210, 406, or any other section of the Indian Penal Code. In s. 210 of the Indian Penal Code the word “satisfied” is to be understood in its ordinary meaning, and not as referring to decrees, the satisfaction of which has been certified to the Court. Under s. 235 of the Code of Civil Procedure (Act XIV. of 1882) the decree-holder, or the party who applies for execution, is bound to state in his application any adjustment between the parties after decree, whether such adjustment has or has not been previously certified to the Court. Intentional omission to make such statement amounts to an offence under s. 193 of the Indian Penal Code (Act XLV. of 1860). S. 199 of the Penal Code (Act XLV. of 1860) does not apply to applications for execution containing false averments.—*Queen-Empress v. Bāpuji Dayaram*, I. L. R., 10 Bom. 288. [Feb. 18, 1886.]

Held, following *T. D. Bandyopadhyaya v. B. L. Mukhopadaya* (I. L. R., 12 Cal. 608) (Tyrrell, J., doubting), that an application made by a decree-holder, the object of which is that the receipt of certain sums of money paid out of Court may be certified, is a “step in aid of execution,” such as will keep the decree alive, within the meaning of the Limitation Act (XV. of 1877), sch. 2, No. 179 (4). *Gunsham v. Mukh* (I. L. R., 3 All. 320) referred to.—*Muhammad Husain Khan v. Rām Sarup*, I. L. R., 9 All. 9. [July 12, 1886.]

On the 22nd March 1886, the applicant presented an application to a Subordinate Judge, praying that the adjustment of certain decrees, dated the 28th March 1867, and 11th July 1871, might be certified, and a sanction granted to a *sankhat*, dated 18th March 1880, passed to him by the defendant in satisfaction of the said decrees and in substitution of two bonds dated February 1870. The Subordinate Judge, being of opinion that the application could not be granted, inasmuch as the execution of the decrees was then barred by limitation, referred the case to the High Court under s. 617 of the Civil Procedure Code (Act XIV. of 1882). Held that the question could not be referred under s. 617 of the Civil Procedure Code (Act XIV. of 1882), as the order applied for to the Subordinate Judge was appealable under s. 2 of the Code. The question raised by the application related to the satisfaction of the decree within the meaning of s. 244 of the Code.—*Rangji v. Harjivan*, I. L. R., 11 Bom. 57. [July 22, 1886.]

UNDER s. 258 of the Civil Procedure Code (Act XIV. of 1882) no Court can recognize an uncertified adjustment of a decree for any juridical purpose whatever. A suit will not lie to enforce an uncertified agreement of adjustment of a decree against a judgment-debtor, the consideration for which is, that it shall operate in satisfaction of the decree; as there is, in that case, no consideration which the Court can recognize, and, therefore, no valid consideration for the judgment-debtor's agreement. The plaintiff was the assignee of a decree obtained by one *Hāji Oomār Khamesā* against the defendants on the 5th May 1883. By that decree, *Hāji Oomār Khamesā* was declared entitled to recover Rs. 9,961-5-6, with interest at nine per cent. from the defendants; and payment was ordered to be made to him of the said sum by weekly instalments of Rs. 200. In order to secure the payment of the said instalments, the defendants were required to execute a mortgage to *Hāji Oomār Khamesā* of certain property, with power to him to sell the same, and

to execute the decree for the whole amount, in case of default, for six months. *Haji Oomár Khamees* assigned the decree to the plaintiff in the present suit, and, subsequent to the assignment (*viz.* on the 21st July 1888), the defendants executed to the plaintiff the mortgage on which the present suit was brought. The mortgage-deed, after reciting the above facts, stated that the defendants had agreed to satisfy the amount of the decree, and it contained a covenant, by the defendants, that they would pay Rs. 9,961-5-6, with interest at six per cent., by monthly instalments of Rs. 400 from the 21st August 1888. The mortgage, therefore, differed from the decree, both with regard to the instalments and the rate of interest. The plaintiff sued to recover the sum of Rs. 4,207, being the amount of instalments due to him under the said mortgage. *Held* that the suit would not lie, as the mortgage was an adjustment of the decree, and had not been certified to the Court, as required by s. 258 of the Civil Procedure Code (Act XIV. of 1882).—*Haji Abdul Rahiman v. Khoja Kháki Aruth*, I. L. R., 11 Bom. 6. [Aug. 13, 1886.]

259. If the decree be for any specific moveable, or for any share in a specific moveable, or for the recovery of a wife, it may be enforced by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the imprisonment of the judgment-debtor, or by attaching his property, or by both imprisonment and attachment if necessary.

Decrees for specific moveables, or recovery of wives. Extending to Provincial S. Courts (except so far as relates to recovery of wives).

When any attachment under this section has remained in force for six months, if the judgment-debtor has not obeyed the decree, and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed under section 208, such amount, and, in other cases, such compensation, as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease to exist.

A, who had been directed by a decree to refrain from preventing her daughter returning to her husband, after the date of the decree permitted her daughter, who was of age, to reside in her house. *Held* that such conduct on the part of *A* was no such evidence of interference with her daughter's return as would justify the execution of the decree against her, under the provisions of s. 200 of Act VIII. of 1859 (corresponding with ss. 259 and 260, Act XIV. of 1882).—*Ajnasi Kuar v. Suraj Parshad*, I. L. R., 1 All. 501. [Nov. 14, 1877.]

260. When the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for the performance of, or abstinence from, any other particular act, has been made, has had an opportunity of obeying the decree or injunction, and has wilfully failed to obey it, the decree may be enforced by his imprisonment, or by the attachment of his property, or by both.

When any attachment under this section has remained in force for one year, if the judgment-debtor has not obeyed the decree, and the decree-holder has applied to have the attached property sold, the property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance (if any) to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree, and paid all costs of executing the same, which he is bound to pay, or if, at the end of one year from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist.

By a decree relating to certain joint property belonging to the plaintiff and defendant, but which had previously been held in the sole name of the defendant, it was directed that the plaintiff and defendant should jointly manage the property, and that the names of both should appear in all papers connected with such property. The plaintiff subsequently applied to have his name registered in the collectorate, but was opposed by the defendant, who, it appeared, also allowed the amlahs of the estate to continue to use his sole name. *Held* that the Court had, under the circumstances, jurisdiction under s. 260 of the Civil Procedure Code to attach the defendant's property until he had obeyed the decree by having the joint names of himself and the plaintiff inserted in all documents belonging to the estate.—*Gouri Prosad Moitra v. Bhola Nath Sanyal*, 8 C. L. R. 487, [Mar. 39, 1881.]

UPON an application under s. 235 of Act X. of 1877 (Civil Procedure Code) for the execution of a decree which directed the judgment-debtor forthwith to pull down and remove such portion of a wall as had been erected by him upon the wall of the decree-holder, the mode in which the assistance of the Court was required to be given was stated in column *f* of such application to be by giving the decree-holder possession of his wall by pulling down the wall erected thereon. The Court directed an order to issue to the Nazir to remove the judgment-debtor's wall from the top of the decree-holder's wall. *Held* that the decree-holder's application could not be granted in that form, and that he should have asked the assistance of the Court to be given in the way provided for by s. 260 of Act X. of 1877, by the imprisonment of the judgment-debtor, or the attachment of his property, or both. *Held* also that the Court was wrong in passing the order it had, but that it should have pointed out to the decree-holder the manner in which he should have asked the assistance of the Court to be given, and the remedy to which he was entitled; and that, upon such amended application being made, the proper course to pursue was to serve a notice on the judgment-debtor, directing him to comply with the order contained in the decree within a time to be fixed by such notice; and that, if he failed to comply with such order within the time so limited, the Court might then, at the instance of the decree-holder, make an order, either for the judgment-debtor's imprisonment, or for the attachment of his property, due regard being had to the provision of s. 260 in the latter case. *Held* further that the High Court, in special appeal, should not vary the order for execution which had been passed, in such a way as to give the decree-holder that relief for which he did not ask.—*Protab Chunder Doss v. Peary Chowdhrair*, I. L. R., 8 Cal. 174. [Aug. 25, 1881.]

261. If the decree be for the execution of a conveyance, or for the endorsement of a negotiable instrument, and the judgment-debtor neglects or refuses to comply with the decree, the decree-holder may prepare the draft of a conveyance or endorsement in accordance with the terms of the decree, and deliver the same to the Court.

The Court shall thereupon cause the draft to be served on the judgment-debtor in manner hereinbefore provided for serving a summons, together with a notice in writing stating that his objections (if any) thereto shall be made within such time (mentioning it) as the Court fixes in this behalf.

The decree-holder may also tender a duplicate of the draft to the Court for execution, upon the proper stamp-paper if a stamp is required by law.

On proof of such service, the Court, or such officer as it appoints in this behalf, shall execute the duplicate so tendered, or may, if necessary, alter the same, so as to bring it into accordance with the terms of the decree, and execute the duplicate so altered.

Provided that, if any party object to the draft so served as aforesaid, his objections shall, within the time so fixed, be stated in writing, and argued before the Court; and the Court shall thereupon pass such order as it thinks fit, and execute, or alter and execute, the duplicate in accordance therewith.

A CONCILIATION-AGREEMENT, dated 2nd October 1880, between the decree-holder and the judgment-debtor, stipulating that the former should allow a remission of 10 rupees, and the latter should execute a document for the remaining sum of Rs. 90, to be paid in

1882, was filed in Court on the 20th November 1880. In 1883 the decree-holder presented two applications for satisfaction of the agreed debt of Rs. 90 by attachment of the debtor's property; which applications were granted, but were not proceeded with through some default of the decree-holder. On the 4th June 1885, the decree-holder made the present application, praying that under ss. 261 and 262 of the Civil Procedure Code (Act XIV. of 1882) an order directing the judgment-debtor to execute a bond in terms of the conciliation-agreement might be made, or that the Court might execute one on his behalf. On reference by the Subordinate Judge under s. 617 of the Civil Procedure Code (Act XIV. of 1882) to the High Court, *held* that the applications in 1883 for attachment of the debtor's property were not "in accordance with law," being forbidden by the Dekkhan Relief Act (XVII. of 1879, s. 22), and that the present application under s. 261 of the Civil Procedure Code (Act XIV. of 1882) was, therefore, too late under cl. 4, art. 179 of sch. 2 of the Limitation Act (XV. of 1877).—*Chatur Khushál Chaudh. Mahádu Bhagáji, I. T. R., 10 Bom. 91. [Aug. 13, 1885.]*

262. The execution of a conveyance, or the endorsement of a negotiable instrument, by the Court under the last preceding section, may be in the following form: "*C D, Judge of the Court of (or as the case may be), for A B in a suit by E F against A B,*" or in such other form as the High Court may, from time to time, prescribe, and shall have the same effect as the execution of the conveyance or endorsement of the instrument of the party ordered to execute or endorse the same.

263. If the decree be for the delivery of any immoveable property, Decree for immoveable possession thereof shall be delivered over to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, and, if need be, by removing any person bound by the decree who refuses to vacate the property.

In 1877 the plaintiffs sued the defendant for possession of certain properties, and obtained a decree. In execution of this decree, the plaintiff, on 12th of July 1879, obtained formal possession of the properties sued for. The defendant continued to remain in actual possession and occupation of a portion of the premises, and refused to give up possession of the same to the plaintiff, who served him with a two months' notice to quit in June 1881. The plaintiff did not evict the defendant in execution of the decree obtained by him against the defendant, but instituted a fresh suit for that purpose. *Held* that such a suit would lie. *Seemle*, that the delivery of formal possession in execution of a decree for possession gives a cause of action against a defendant who remains in occupation of the premises, which may be enforced in a regular suit.—*Shama Charan Chatterji v. Madhub Chandra Mookerji, I. L. R., 11 Cal. 93. [Sep. 12 1884.]*

264. If the decree be for the delivery of any immoveable property in the occupancy of a tenant or other person entitled to occupy the same, and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum, or in such other mode as is customary, at some convenient place, the substance of the decree in regard to the property:

Provided that, if the occupant can be found, a notice in writing containing such substance shall be served upon him, and in such case no proclamation need be made.

DELIVERY of possession by going through the process prescribed by s. 224 of Act VIII. of 1859 is the only way in which the decree of the Court awarding possession to the plaintiff can be enforced; and as, in contemplation of law, both parties must be considered as being present at the time when the delivery is made, such delivery must, as against the defendant, be deemed equivalent to actual possession. As against third parties such symbolical possession is of no avail, because they are not parties to the proceedings. But if the defendant subsequently dispossesses the plaintiff by receiving the rent and profits, the plaintiff will have twelve years from such dispossession to bring another suit.—*Juggobundhu Mukerjee v. Ram Chunder Bysack, I. L. R., 5 Cal. 584. [Feb. 2, 1880.]*

In 1877 the plaintiffs sued the defendant for possession of certain properties and obtained a decree; in execution of this decree the plaintiff, on 12th of July 1879, obtained formal possession of the properties sued for. The defendant continued to remain in actual possession and occupation of a portion of the premises, and refused to give up possession of the same to the plaintiff, who served him with a two month's notice to quit in June 1881. The plaintiff did not evict the defendant in execution of the decree obtained by him against the defendant, but instituted a fresh suit for that purpose. *Held*, that such a suit would lie. *Seemle*, that the delivery of formal possession in execution of a decree for possession gives a cause of action, against a defendant who remains in occupation of the premises, which may be enforced in a regular suit.—*Shama Charan Chatterji v. Madhub Chundra Mookerji*, I. L. R., 11 Cal. 93. [Sep. 12, 1884.]

265. If the decree be for the partition or for the separate possession of a share of an undivided estate paying revenue to Government, the partition of the estate or the separation of the share shall be made by the Collector and according to the law (if any) for the time being in force for the partition, or the separate possession of shares, or such estates.

A SUIT will not lie for partition of portion only of a joint estate. Accordingly, when the plaintiff sued for partition of a portion of a joint estate and for *khas* possession of the share which might on the partition be allotted to him, alleging that he had been deprived of possession of that portion by his co-sharers in collusion with others, it was held the suit would not lie. Although under s. 265, (Act X. of 1877), a decree may be made for partition of revenue-paying land, yet that decree must be carried into execution solely by the Collector.—*Ramjoy Ghose v. Ram Runjun Chuckerbutty*, 8 C. L. R. 367. [Mar. 11, 1881.]

WHERE one of several co-sharers, owners of a piece of land defined by metes and bounds, and forming part of a revenue-paying estate, brings a suit for partition, in which he does not seek to have his joint liability for the whole of the Government revenue annulled, such suit is cognizable by the Civil Courts, which have jurisdiction to determine the plaintiff's right to have his share divided and to make a decree accordingly.—*Chundernath Nundi v. Hur Narain Deb*, I. L. R., 7 Cal. 153. [April 13, 1881.]

S. 265 does not apply to property held on *raiya* tenure, but to permanently settled estates.—*Muttu v. Kudalalaga*, I. L. R., 6 Mad. 97. [Oct. 2, 1882.]

In 1851 an estate was brought under *butwara* under the provisions of Reg. XIX. of 1814. At such *butwara*, a portion of the estate, being covered with water, and unfit for cultivation, was not divided, but left joint amongst all the co-sharers, the land-revenue payable on account of the whole estate being apportioned amongst the several estates into which the portion divided was split up. Subsequently, on the portion remaining joint becoming dry and fit for cultivation, an application was made by one of the co-sharers to the Collector to partition the same under the provisions of Beng. Act VIII. of 1876, but that officer refused to do so, on the ground that the land "did not bear an assessed revenue, and was not shown in the *towji*." In a suit brought under the above circumstances to compel the Collector to make the partition, and in the alternative to have it made by the Civil Court, *held* that though the reason given by the Collector for refusing was an erroneous one, he was not bound to make the partition under the provisions of Beng. Act VIII. of 1876, as the land in suit was not liable for the payment of one and the same demand of land-revenue, and was therefore not a joint undivided estate within the terms of s. 4, cl. 9 of that Act. *Held* also that the word "estate," as used in s. 265 of the Civil Procedure Code, must not be construed in the same limited and defective sense in which it is used in Act VIII. of 1876, but must be taken to be there used in its ordinary signification, and that consequently the plaintiff was entitled to a decree for partition under the provisions of that section. *Chundernath Nandi v. Hur Narain Deb* (I. L. R., 7 Cal. 153) approved.—*Secretary of State v. Nundun Lall*, I. L. R., 10 Cal. 435. [Jan. 18, 1884.]

In 1862 it was held by the Sadr Court that s. 225 of Act VIII. of 1859 did not apply to *raiya* estates. This ruling having always been acted on in the Madras Presidency, *held* by the Full Bench that a different construction should not, under these circumstances, be placed on s. 265 of the Code of Civil Procedure, 1882. *Muttu v. Kudalalaga* (I. L. R., 6 Mad. 97) confirmed.—*Muttuchidambara v. Karuppa*, I. L. R., 7 Mad. 332. [Jan. 28, 1884.]

M. OBTAINED against R a decree for possession of "a one-fourth share of the two fallow lands, Nos. 490 and 541, measuring 7 bighas and 2 bighas 16 biswas respectively, after removal of the trees planted thereon." The Court, in executing the decree, placed the decree-holder in joint possession of the two plots, to the extent of the one-fourth share decreed to him, but declined to remove the trees until the said share had been specifically ascertained and partitioned by the Collector, in reference to s. 265 of the Civil Procedure Code. *Held* that the decree could not be understood to entitle the plaintiff to remove the trees from a larger area than that to which he was entitled under that decree; and that, so long as that area remained joint and unascertained, the plaintiff could not execute the decree in the manner sought. *Held* also that the decree in the present case could not be called a "decree for the partition or for the separate possession of a share of an undivided estate paying revenue to Government," within the meaning of s. 265 of the Civil Procedure Code, so as to require the intervention of the Collector for the purpose of executing the decree; and that the Court of first instance, in order to meet the exigencies of the decree, should have separated the one-fourth to which the plaintiff was declared entitled, and, in executing the decree, should have ordered that the trees standing on the one-fourth area should be uprooted.—*Ram Dayal v. Megu Lal*, I. L. R., 6 All. 452. [June 17, 1884.]

V. MORTGAGED to the plaintiff his house and certain undivided land in which H and others, Hindu co-parceners, had a share. R bought the interest of H in the land at a Court-sale, and let to H and V, who, failing to pay rent, were sued by R, who got a decree for possession. This decree was transferred for execution to the Collector, who sold the land, and ratably distributed the proceeds, except to V, who declined to take the amount tendered as his share. The plaintiff sued V and the purchasers under R's decree to recover his mortgage-debt by a sale of the property mortgaged to him. *Held* that R's decree, not being for partition of the family-property, or for the separate possession of a share, was not one contemplated by s. 265 of the Code of Civil Procedure. The proceedings of the Collector were without jurisdiction, and the plaintiff was entitled to ignore them, and assert his claim under the mortgage. That the defendants being in actual possession, albeit through a sale under a void decree—could not be ousted in the present suit, and were entitled to say that the plaintiff had not proved his title to sell the specific lands mortgaged.—*Nārāyan v. Vithu*, I. L. R., 8 Bom. 539. [June 24, 1884.]

F.—Of Attachment of Property.

266. The following property is liable to attachment and sale in execution of a decree (namely), lands, houses or other

Property liable to attachment and sale in execution of decree.

buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory-notes, Government-securities, bonds, or other securities for money, debts, shares in the capital or joint-stock of any railway, banking, or other public Company or Corporation, and, except as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power, which he may exercise, for his own benefit, and whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Extending to Provincial S. C. Courts (except so far as relates to immoveable property).

Provided that the following particulars shall not be liable to such attachment or sale (namely)—

- (a) the necessary wearing apparel of the judgment-debtor, his wife, and children;
- (b) tools of artificers, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such;
- (c) the materials of houses and other buildings belonging to and occupied by agriculturists;
- (d) books of account;
- (e) mere rights to sue for damages;
- (f) any right of personal service;
- (g) stipends and gratuities allowed to military and civil pensioners of Government, and political pensions;

- (h) the salary of a public officer or of any servant of a Railway Company, when such salary does not exceed twenty rupees *per mensem*, and one moiety of the salary of any such officer or servant when his salary exceeds that amount;
- (i) the pay and allowances of persons to whom the Native Articles of War apply;
- (j) the wages of labourers and domestic servants;
- (k) an expectancy of succession by survivorship or other merely contingent or possible right or interest;
- (l) a right to future maintenance.

Explanation.—The particulars mentioned in clauses (g), (h), (i), and (j), are exempt from attachment or sale, whether before or after they are actually payable;

Provided also that nothing in this section shall be deemed

- (a) to exempt the materials of houses and other buildings from attachment or sale in execution of decrees for rent, or
- (b) to affect the Army Act, 1881, or any similar law for the time being in force,

Act X. of 1877, s. 266, proviso c, does not prohibit the sale (in execution of decree) of property specifically mortgaged, albeit the property be materials of a house belonging to or occupied by an agriculturist.—*Bhagvandas v. Maithibhai*, I. L. R., 4 Bom 25. [Sep. 4, 1879.]

On 28th September 1887 (*i. e.*, three days before Act X. of 1877 came into operation), an application was made for the enforcement of a money-decree by attachment (*inter alia*) of the political pension enjoyed by the defendants. Under Act VIII. of 1859, s. 216, a notice was issued on the same day to the defendants, calling upon them to show cause why the decree should not be executed. The defendants accordingly appeared on the day fixed (at which date Act X. of 1877 had come into force), and contended that, under s. 266, cl. g, of that Act, the pension was no longer attachable. *Held* that all proceedings commenced and pending when Act X. of 1877 became law were, under Act I. of 1868, s. 6, to be governed by the law theretofore in force; the general rule of construction contained in that section not being affected or varied by Act X. of 1877, ss. 1 and 3; and that a *bona fide* application for enforcement of a decree in a particular way, coupled with an order of the Court in furtherance of that object, as much constitutes a proceeding in execution commenced and pending as the actual issue of a warrant of attachment.—*Vidyaram v. Chandra Sheikharraam*, I. L. R., 4 Bom. 163. [Nov. 19, 1879.]

Held that ss. 266 and 295 must be read together, and that an ordinary judgment-creditor is not entitled, under s. 295, to a rateable proportion of the assets realized by the sale of such house or building under a decree obtained by another creditor for rent due to him in respect of the said house or building.—*Maniklal Venilal v. Lakha and Mansing*, I. L. R., 4 Bom. 429. [Feb. 17, 1880.]

In case of pensions not exempted from attachment under s. 266 of the Civil Procedure Code (Act X. of 1877), it is only arrears in respect thereof actually accrued due that are attachable in execution of a decree. *Syud Tuffuzul Hussain Khan v. Rughunath Pershad* (14 Moore's I. A. 30; 7 B. L. R. 186) cited and followed.—*Bhojrab Chunder Roy v. Madhub Chunder Sein*, 6 C. L. R. 19. [Feb. 26, 1880.]

THE right or interest which the vendor of immoveable property has in the purchase-money, where it has been agreed that the same shall be paid on the execution of the conveyance, is not, so long as the conveyance has not been executed, a debt, but a merely possible right or interest, and as such, under s. 266 of Act X. of 1877, is not liable to attachment and sale in the execution of a decree. The person who purchases such a right or interest at a sale in the execution of a decree takes nothing by his purchase.—*Ahmad-ud-din Khan v. Majlis Rai*, I. L. R., 3 All. 12. [June 7, 1830.]

PERSONS who agree to spin cotton belonging to a spinning and weaving company, and to receive a certain amount of money for a certain quantity of cotton spun by them, are labourers within the meaning of s. 266 of the Code of Civil Procedure (Act X. of 1877), and therefore their remuneration is wages, which, under cl. j of the section, cannot be attached in execution of a decree.—*Jeehand Khusal v. Aba and Baiká*, I. L. R., 5 Bom. 142. [July 26, 1880.]

DEBTS due to a British subject by the Gáikwár Government, or by a subject of that Government or of a State in the Province of Káthiáwár, are not debts which, under s. 266 of the Code of Civil Procedure (Act X. of 1877), are liable to attachment in execution of a decree. Claims over which no Court in British India has jurisdiction are not debts liable to be attached under s. 266 of the Civil Procedure Code (Act X. of 1877). The mere circumstance that the garnishee is, at the time of the application for attachment, beyond the limits of British India, would not of itself render the debts not liable to be attached.—*Ghamshámí, v. Bhánsáli*, I. L. R., 5 Bom. 249. [Jan. 27, 1881.]

BEFORE property of a judgment-debtor can be exempted from execution as falling under the head of the property described in s. 266 of the Code of Civil Procedure, it is necessary that the Court should first express its opinion that such property is necessary to enable the execution-debtor to earn his livelihood, and the Court which must decide this point is the Court which issues the execution. S. 14 (a), part 2, Chap. 5 of the general rules and Circular Orders of the High Court, commented on by *Bakhr Mahomed v. Doorga Churn Shaha*, I. L. R., 10 Cal. 29. [July 19, 1882.]

UNDER cl. h of s. 266 of the Code of Civil Procedure, 1882, a moiety of the salary of a public officer drawing half pay (exceeding Rs. 20 per mensem) on sick leave is liable to attachment.—*Beard v. Egerton*, I. L. R., 6 Mad. 179. [Jan. 17, 1883.]

WHERE the decree of the Civil Court expressly declares that a person's right in a *eritti* shall be sold, it is not competent in execution-proceedings to question the command, on the ground of the *eritti* being protected from sale under s. 266 of the Code of Civil Procedure, or from its being by the nature of it unsaleable to the public at large.—*Sadashiv Lalit v. Jayantibái*, I. L. R., 8 Bom. 185. [Jan. 30, 1883.]

A DEBT secured by mortgage of immoveable property cannot be sold in execution of a decree under the provisions of the Civil Procedure Code applicable to moveable property.—*Srinath Dutt v. Gopal Chunder Mitra*, I. L. R., 9 Cal. 511. [Mar. 14, 1883.]

THE right to sue for mesne-profits is a "right to sue for damages" within the meaning of s. 266, cl. e, of the Code of Civil Procedure, and, therefore, cannot be sold in execution of decree. Where, therefore, the plaintiff purchased the right to sue for mesne-profits at a sale in execution of a decree, *held* that a suit by him to enforce the right was not maintainable.—*Shyam Chand Koondoo v. Land Mortgage Bank of India, Limited*, I. L. R., 9 Cal. 695. [June 19, 1883.]

THE expression, "materials of houses and other buildings belonging to, and occupied by, agriculturists," used in s. 266, cl. c, of the Code of Civil Procedure, is intended to exempt from attachment and sale the house dwelt in by an agriculturist as such, and the farm-buildings appended to such dwelling. The exemption does not extend to other houses not in the physical occupation of an agriculturist owner as a dwelling appropriate or convenient for his calling. The exemption extends, after the death of an agriculturist debtor, to his representative who occupies the house in good faith as an agriculturist, and who does not take it up merely with the view of defrauding his creditor.—*Ráddhakisan Hakumji v. Balvanti Rámji*, I. L. R., 7 Bom. 530. [Sep. 6, 1883.]

THE bar in s. 266 of the Civil Procedure Code to the attachment of gratuities allowed by Government to its ex-servants, military and civil, is not limited to such gratuities as are allowed to "pensioners," but applies to a gratuity granted in consideration of past services.—*Bawan Das v. Mul Chand*, I. L. R., 6 All. 173. [Jan. 22, 1884.]

A HERITABLE right to receive a certain monthly allowance originally assigned in lieu of a share of landed property is not a mere right to maintenance or anything else exempted by the proviso to s. 266 of the Civil Procedure Code, and is saleable in execution of a decree.—*Salamat Hossein v. Luckhi Ram*, I. L. R., 10 Cal. 521. [Mar. 5, 1884.]

K, a servant in the employment of the East India Railway Company, was recommended by the Traffic Manager, a bonus in consideration of long and good services. This recommendation was sanctioned, and the amount of the bonus was received by the District Paymaster. Before payment to K, the money was attached in execution of a decree obtained against him by J. *Held* that inasmuch as the bestowal of the money was a gift of moveable property of date subsequent to the 1st July 1882, and was not evidenced by a registered instrument, it could only be effected by actual delivery; that as there had been no such delivery as completed the transfer (s. 123 of the Transfer of Property Act, and s. 90 of the Contract Act), the money was not at K's disposal, and he could not have enforced payment; and that the money was therefore not liable to attachment in execution of a decree against him.—*Janki Das v. East Indian Railway Company*, I. L. R., 6 All. 634. [July 16, 1884.]

THE mangalsutra, a neck-ornament which is worn by a Hindu married woman during the life-time of her husband, and never removed, is a part of her necessary wearing apparel, and is exempted from execution under s. 266 of the Code of Civil Procedure (Act XIV. of 1882).—*Appāna v. Tangammā*, I. L. R., 9 Bom. 106. [Sep. 18, 1884.]

THE doors and window-shutters of a *pucca* building cannot be separately attached in execution of decrees forming as they do part of an immovable property, and having no separate existence.—*Poru Bepari v. Ronuo Maifarash*, I. L. R., 11 Cal. 164. [Jan. 28, 1885.]

THE sale of arms by the Názir of the Court, in execution of a decree, is a sale by a public servant in discharge of his duty, and is, therefore, excluded by s. 1, cl. 3, from the operation of the Indian Arms Act (XI. of 1878). It is expedient for the Court ordering such sale to give notice of the sale and of the purchaser's name and address, as contemplated by s. 5 of that Act, to the "Magistrate of the District or to the police-officer in charge of the nearest police-station."—*Wálá Hiráji v. Hirá Patel*, I. L. R., 9 Bom. 518. [June 18, 1885.]

S. 151 of the Army Act, 1881, not being affected by the provisions of s. 266 of the Code of Civil Procedure, the attachment by a Civil Court of a moiety of the monthly salary of a debtor subject to military law, not exceeding Rs. 20, is legal.—*Vírarágava v. Rámudu*, I. L. R., 9 Mad. 170. [Nov. 17, 1885.]

THE provisions of s. 244 (c) of the Civil Procedure Code prohibit not only a suit between parties and their representatives, but also a suit by a party or his representatives against a purchaser at a sale in execution of the decree, the object of which is to determine a question which properly arises between the parties or their representatives, and relates to the execution, discharge, or satisfaction of the decree. A judgment-debtor, whose occupancy-tenure had been sold in execution of a decree for money, sued the purchaser for recovery of the property, on the ground that the sale of occupancy-rights in execution of decree was illegal and void, being in contravention of the provisions of s. 9 of Act XII. of 1881 (N. W. P. Rent Act). Held by the Full Bench that the question involved in the suit was as determinable only by order of the Court executing the decree, and that the suit was therefore not maintainable. *Narain v. Puran* (Weekly Notes, 1883, p. 218) referred to.—*Basti Ram v. Pattu*, I. L. R., 8 All. 146. [Jan. 21, 1886.]

THE nature of an *upādhyakpanā vritti* on the river Godávari at Násik was stated to be as follows: "The *vritti* is an hereditary priestly office by virtue of which certain religious ceremonies are performed on the river Godávari on behalf of pilgrims who pay fees to the holders of such priestly offices for performance of such religious ceremonies at or about the time of their performance. By law and usage, a certain relationship grows up between certain pilgrims or worshippers and a particular priest, and when such relationship exists, such pilgrims or worshippers are called *yajmāns*, or clients of the priest, whose right to offer and perform the religious ceremonies in question for such *yajmāns* becomes exclusive against rival priests, so far that, under the Hindu law as applied and followed in this Presidency, if any such *yajmāns* accept the religious services of another priest, they must compensate the priest, whose *yajmāns* they are, by giving to him a reasonable fee. Held that such a *vritti* is a "right of personal service" within the meaning of cl. f of s. 266 of the Code of Civil Procedure (Act XIV. of 1882), and, therefore, protected from attachment.—*Ganesh Rámchandra Dáte v. Shankar Rámchandra*, I. L. R., 10 Bom. 395 [Feb. 3, 1886.]

By a deed of assignment the usufruct of certain land was given to a Hindu widow for her maintenance, the deed expressly stipulating that the same was not to be in any way alienated. A judgment-creditor of the widow caused the land to be attached in execution of a money-decree. The widow contended that the land was protected from attachment under s. 266 of the Civil Procedure Code (Act XIV. of 1882). Both the lower Courts disallowed the widow's contention. On appeal to the High Court, held, reversing the orders of the lower Courts, that, having regard to the proviso against alienation contained in the deed of assignment, the usufructuary interest in the land assigned to the widow was one over which she had no power of disposal, and, consequently, could not be attached and sold in execution of a money-decree against her.—*Díwálí v. Apáji Ganesh*, I. L. R., 10 Bom. 342. [Feb. 16, 1886.]

WHERE, in a joint Hindu family, the father disposes of family property, the son's interest is bound, unless the son can show, in proceedings taken for that purpose, that the disposal of the property by his father was made under circumstances which deprived his father of his disposing power. So also where family-property is sold under proceedings taken against the father alone, the son's interest is bound, unless the son can show that the sale was on account of an obligation to which he was not subject. The father is, in

fact, the representative of the family both in transactions and in suits, subject only to the right of the sons to prevent an entire dissipation of the estate by particular instances of wrong-doing on the father's part. — *Jagabhai Lalubhai v. Vijbhukandas Jagjivandas*, I. L. R., 11 Bom. 37. [June 30, 1886.]

UNDER the Transfer of Property Act, property includes an actionable claim. There was sold in execution of a decree the judgment-debtor's right to get by division a quantity of land which had been reserved by him for his own use in a deed of gift, but which, at the time of the execution-sale, was in the possession of the donee of the estate, the land never having been appropriated by measurement as provided in the deed. In a suit brought by the auction-purchaser (decree-holder) for the area of the land reserved by measurement and division, held that the claim of the judgment-debtor to the land was a transferable claim, and therefore capable of being attached and sold in execution under s. 266 of the Civil Procedure Code. — *Rudra Perakash Misser v. Krishna Mohun Ghatak*, I. L. R., 14 Cal. 241. [Nov. 26, 1886.]

267. The Court may, of its own motion, or on the application of the decree-holder, summon any person whom it thinks necessary, and examine him in respect to any property liable to be seized in satisfaction of the decree, and may require the person summoned to produce any document in his possession or power relating to such property, and, before issuing the summons of its own motion, shall declare the person on whose behalf the summons is so issued.

Extending to Provincial S. C. Courts.

268. In the case of (a) a debt not secured by a negotiable instrument, (b) a share in the capital of any public Company or Corporation, (c) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court, the attachment shall be made by a written order prohibiting,

Ditto.

(a) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court;

(b) in the case of the share, the person in whose name the share may be standing, from transferring the same or receiving any dividend thereon;

(c) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

A copy of such order shall be fixed up in some conspicuous part of the Court-house, and another copy of the same shall be sent, in the case of the debt, to the debtor; in the case of the share, to the proper officer of the Company or Corporation; and in the case of the other moveable property (except as aforesaid), to the person in possession of the same.

A debtor prohibited under clause (a) of this section may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order, requiring the officer whose duty it is to disburse the salary to withhold, every month, such portion as the Court may direct, until the further orders of the Court.

A copy of every such order shall be fixed up in a conspicuous part of the Court-house, and shall be served on the officer so required.

Every such officer may, from time to time, pay into Court any portion so withheld, and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the judgment-debtor.

A EXECUTED a promissory note in favour of B. C obtained a money-decree against B, and in execution of such decree the Court proceeded to attach the note by an order issued to A under s. 268 of the Civil Procedure Code, and subsequently to sell B's title and interest in the note by auction. D, assignee of the purchaser at the sale, sued A for recovery of the amount of the note. *Held* that there had been no valid attachment of the note, actual seizure and delivery under ss. 270 and 299 having been omitted; and that, consequently, nothing had passed to D by the execution-sale.—*Batcharya v. Latchmidvanna*, 4 Ind. Jur. 166.

UNDER the provisions of s. 268 of the Code of Civil Procedure (Act X. of 1887), bonds cannot be sold till the end of the six months from the date of attachment. A Court of Small Causes cannot appoint a receiver. Bonds, therefore, on which recovery will be time-barréd before the date on which a sale can legally be made, cannot be made available for satisfaction of the judgment-creditor's debt.—*Nursingdás Raghunáthdás v. Tulsirám Bin Doulatram*, I. L. R., 2 Bom. 558. [Mar. 26, 1878.]

EXCEPT in the manner allowed by s. 20, Act XI. of 1865, the Judge of the Small Cause Court cannot now send a decree of his own Court for execution by another Court, nor can he issue an order under s. 268 (Act X. of 1877) out of his own jurisdiction.—*Mounshee Hossein Aly v. Ashotosh Gangooly*, 3 C. L. R. 30. [July 5, 1878.]

A DECREE-HOLDER, by a prohibitory order issued under s. 268 of the Civil Procedure Code (Act X. of 1877), attached a debt due to his judgment-debtor. The person served with the order applied, under s. 278, to have the attachment removed. *Held* that the application could not be entertained under s. 278, that section having no application to the case; but that, before issuing a proclamation of sale, in execution of a decree, of the debt so attached, it is the duty of the Court, under s. 287, to ascertain all the Court considers it material for the intending purchaser to know in order to judge of the nature and value of the property proclaimed for sale. If the property, of which sale is sought, is a debt, and the Court receives notice from the alleged debtor that no debt exists, the Court should satisfy itself as to the existence, or otherwise, of the debt, and, if it comes to the conclusion that no debt exists, should abstain from proceeding to sale.—*Harilál Amthábhái v. Abhesang Meru*, I. L. R., 4 Bom. 323. [Jan. 6, 1880.]

THE right or interest which the vendor of immoveable property has in the purchase-money where, it has been agreed that the same shall be paid on the execution of the conveyance, is not, so long as the conveyance has not been executed, a debt, but a merely possible right or interest, and as such, under s. 266 of Act X. of 1877, is not liable to attachment and sale in the execution of a decree. The person who purchases such a right or interest at a sale in the execution of a decree takes nothing by his purchase.—*Ahmad-din Khan v. Majlis Rai*, I. L. R., 3 All. 12. [July 7, 1880.]

WHERE money deposited with a railway company by one of its servants as a guarantee for the due performance of his duties was attached by a judgment-creditor of such servant under s. 268 of the Code of Civil Procedure, *held* that the creditor was not entitled to have his decree satisfied out of the deposit, but was entitled to a stop order under cl. c of s. 268, and also to payment of the interest (if any) due by the company on such deposit to the servant.—*Karuthán v. Subramanyá*, I. L. R., 9 Mad. 203. [Jan. 9, 1886.]

IN execution of a decree obtained by them against J and M. the plaintiffs attached a decree obtained by J and M against D, and on the allegation that J and M, in order to avoid the consequence of this attachment, executed a *benami* conveyance of their interest under the attached decree to B and P, and afterwards with the same object took in adjustment and satisfaction of that decree two bonds in favour of R and I respectively, by which immoveable property was pledged as collateral security, the plaintiffs attached these two bonds by prohibitory order, under s. 268 of the Civil Procedure Code, and purchased them at the sale in execution of their decree. In a suit on the bonds against D as the principal defendant with J, M, B, P, R, and I joined as parties, *held* that the plaintiffs were entitled to enforce the lien created by the bonds against the immoveable property specified in them, notwithstanding that no attachment had been made in accordance with the provisions of s. 274 of the Code; a debt secured by a mortgage-lien on immoveable property not being "immoveable property" within the meaning of that section.—*Debendra Kumar Mandel v. Rup Lall Dass*, I. L. R., 12 Cal. 546. [Feb. 5, 1886.]

THE interest of the obligee in a bond hypothecating certain land as security for a debt having been attached under s. 274 of the Code of Civil Procedure and sold, a suit was brought by the purchaser upon the said bond. It was objected that the suit was not maintainable because the bond had not been also attached as a debt under s. 268. *Held* that the fact of the bond not having been attached as a debt under s. 268 did not affect the right of the purchaser to realize the amount due under it.—*Sámi v. Krishnasámi*, I. L. R., 10 Mad. 169. [Dec. 16, 1886.]

269. If the property be moveable property in the possession of the judgment-debtor, other than the property mentioned in the first proviso to section 266, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof :

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody will exceed its value, the proper officer may sell it at once.

The Local Government may, from time to time, make rules for the maintenance and custody, while under attachment, of live-stock and other moveable property, and the officer attaching property under this section shall, notwithstanding the provisions of the former part of this section, act in accordance with such rules.

270. If the property be a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court, and held subject to the further orders of the Court.

Ditto.

271. No person executing any process under this Code, directing or authorizing seizure of moveable property, shall enter any dwelling-house after sunset and before sunrise, or shall break open any outer door of a dwelling-house. But, when any such person has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe any such property to be :

Ditto.

Provided that, if the room be in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to her that she is at liberty to withdraw ; and, after allowing a reasonable time for such woman to withdraw, and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

A BAILIFF or nazir has authority to break open the door of a shop in order to execute a writ of attachment, the previously existing law on the subject not being altered by Act X. of 1877, s. 271.—*Dāmodar Parsotam v. Ishvai Jetha*, I. L. R., 3 Bom. 89. [Dec. 17, 1878.]

It is not necessary that a special order of Court should be made, empowering an officer authorized to arrest a parda-nāshin lady to enter the zanānā of the house in which she resides. Under s. 336 of the Civil Procedure Code, if the officer is able to enter the house, he may break into any room in the house, including the zanānā, in order to effect the arrest.—*Kadumbinee Dossee (S. M.) v. Koylashkaminee Dossee (S. M.)*, I. L. R., 7 Cal. 19. [Mar. 21, 1881.]

272. If the property be deposited in, or be in the custody of, any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice issues :

Ditto.

Attachment of property deposited in Court or with Government officer.

Provided that, if such property is deposited in, or is in the custody of, a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment, or otherwise, shall be determined by such Court.

PROVISO.
A AND B were entitled to receive annually and for ever a specified amount by way of malikana right from the Collector as compensation for their extinguished rights in lakhi-raj lands. In execution of a decree, C, on 13th September, purported to attach, under s. 237 of Act VIII. of 1869, A's share in such specified amount. Subsequent to this attachment, namely, on 23rd September 1873, A and B mortgaged their rights to the plaintiff. In a suit brought by him against A, B, and C, held that attachment under s. 237 was not applicable to a right to receive money for ever; that such an attachment is only good so far as it relates to any specific amount, which may be set forth in the request to the officer in whose hands the moneys lie, as being then payable or likely to become payable; and that the attachment in question was therefore invalid. *Scruble*.—The attaching creditor should have proceeded under s. 235 or s. 236. In either of such cases the defendant, the person to whom the money was payable, would be entitled to notice that he was not at liberty to alienate his rights.—*Nilkunt Dey v. Hurro Soonderce Dossee* I. L. R., 3 Cal. 414. [Jan. 16, 1878.]

THE Court has no discretion to refuse an application, for attachment of property in Court, made under s. 272 of the Civil Procedure Code.—*Noorjahan Begum v. Mashitty Khanum*, 8 C. L. R. 17. [Dec. 22, 1880.]

IN execution of a decree of a Munsif's Court, the plaintiff attached certain money, the proceeds of decrees which her judgment-debtor had obtained against third parties, then lying in a Small Cause Court to her credit, and subsequently obtained an order from the Munsif directing the same to be paid to her in satisfaction of her decree, which order was duly communicated to the Small Cause Court Judge. Subsequently, the defendant, who held another decree against the same judgment-debtor, attached the same sale-proceeds. The Small Cause Court Judge then proceeded, under s. 272 of the Civil Procedure Code, to inquire whether the plaintiff was entitled to any priority over the second attaching creditor, and, having decided that question in the negative, divided the sale-proceeds rateably between them. In a suit brought by the plaintiff, under the above circumstances, to recover from the portion of the sale-proceeds so paid to him, held that s. 295 of the Civil Procedure Code had no application, inasmuch as the plaintiff had not applied to the Small Cause Court Judge to execute her decree, and it had never been transferred to the Court for execution; and that the provision in s. 272 is merely intended to mean that any question of title or priority to be determined by the Court in which or in whose custody the property is, and not by the Court which made the order of attachment. *Held* also that, previous to the order by the Munsif directing the payment to be made to the plaintiff, the Small Cause Court Judge would have had jurisdiction to deal with the question he had tried; but as that order was made prior to the attachment by the defendant, the judgment-debtor had no interest in the money which could be so attached, the effect of that order being to vest the property in the money in the plaintiff, and to take it out of the disposal of the Small Cause Court Judge, and consequently the order for distribution was wrong, and the plaintiff was entitled to the decree she sought. *Quere*.—Whether an order made by a Court under s. 272 was intended by the Legislature to be a final order?—*Gopee Nath Acharje v. Achcha Bibee*, I. L. R., 7 Cal. 553. [July 5, 1881.]

Extending to Provincial S. C. Courts, so far as relates to decrees for moveable property.

273. If the property be a decree for money passed by the Court which Attachment of decree for money. passed the decree sought to be executed, the attachment shall be made by an order of the Court directing the proceeds of the former decree to be applied in satisfaction of the latter decree.

If the property be a decree for money passed by any other Court, the attachment shall be made by a notice in writing to such Court under the hand of the Judge of the Court which passed the decree sought to be executed, requesting the former Court to stay the execution of its decree until such notice is cancelled by the Court from which it was sent. The Court receiving such notice shall stay execution accordingly, unless and until

(a) the Court which passed the decree sought to be executed cancels the notice, or

(b) the holder of the decree sought to be executed applies to the Court receiving such notice to execute its own decree.

On receiving such application, the Court shall proceed to execute the decree, and apply the proceeds in satisfaction of the decree sought to be executed.

In the case of all other decrees the attachment shall be made by a notice in writing, under the hand of the Judge of the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, when such decree has been passed by any other Court, also by sending to such Court a like notice in writing to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent. Every Court receiving such notice shall give effect to the same until it is so cancelled.

The holder of any decree attached under this section shall be bound to give information to the Court executing the same such information and aid as may reasonably be required.

Held that Act X. of 1877 does not contemplate the sale of a decree for money as the result of its attachment in the execution of a decree, and the attachment of a decree for money in the mode ordained in s. 273 cannot lead to its sale. **Held** also that the last clause but one of s. 273 applies to other than money-decrees. Where two decrees for money, although they were not passed by the same Court, were being executed by the same Court, **held** that the provisions of the first clause of s. 273 of Act X. of 1877 were applicable on principal.—*Sultan Kuar v. Gulzari Lal*, I. L. R., 2 All. 290. [April 17, 1879.]

A DECREE for money obtained by a judgment-debtor is not a debt, which, by virtue of s. 266 of the Code of Civil Procedure, can be attached and sold. Where a decree-holder desires to render a decree obtained by his judgment-debtor available for the satisfaction of his own decree, the procedure laid down by s. 273 of the Code of Civil Procedure must be followed.—*Tiruvengadā v. Vythilinga*, I. L. R., 6 Mad. 418. [Jan. 29, 1883.]

A DECREE was passed on the 20th February 1878 by the Munsif of M. In November 1878, it was, in accordance with the provisions of s. 223 of the Civil Procedure Code, transferred to the Munsif of J. On the 21st January 1878, an application for execution of the decree was made to the Munsif of J, who thereupon issued an order for the attachment of some immoveable property belonging to the judgment-debtor, and also for the attachment of three decrees standing in his Court in favour of the judgment-debtor against other persons. On the 18th March 1882, the decree-holder applied to the Munsif of J to execute one of these decrees in his behalf, and he further asked that whatever might be realized in such execution should go to the account of the decrees which had been transferred and which was being executed. **Held** that the application of the 18th March 1882 was perfectly legal, and such a proceeding as could keep alive the decrees of the 20th February 1878, and that a subsequent application for execution, dated the 12th April 1883, was therefore not barred by limitation. An application to execute an attached decree is a "step in aid of execution" of the original decree, within the meaning of art. 179, s. 2 of the Limitation Act, inasmuch as its object is to obtain money in order to pay off the judgment-debtor.—*Iachman v. Thondi Ram*, I. L. R., 7 All. 382. [Feb. 28, 1885.]

S. 273 of the Civil Procedure Code (Act X. of 1877) having expressly provided a mode for the attachment of decrees, the procedure laid down in s. 274 relating to immoveable property has no application to the attachment of a decree for redemption. Under s. 316 of the Civil Procedure Code (Act X. of 1877), the title of a purchaser at a Court-sale becomes complete upon his payment of the purchase-money and confirmation of the sale by the Court. When the sale is admitted, production of a certificate is not necessary to prove that fact.—*Naigar Timāpā v. Bhāskar Parmaya*, I. L. R., 10 Bom. 444. [Mar. 11, 1886.]

274. If the property be immoveable, the attachment shall be made by

Attachment of immoveable property. an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from receiving the same from him by purchase, gift, or otherwise,

The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be fixed up in a conspicuous part of the property and of the Court-house.

When the property is land paying revenue to Government, a copy of the order shall also be fixed up in the office of the Collector of the District in which the land is situate.

A *SUIT* on a mortgage foreclosed under Reg. XVII. of 1806, s. 8, comprising property attached before the date of the mortgage under s. 81 and the following sections of Act VIII. of 1859, was brought against the purchaser of the attached property, which had been sold under the decree obtained by the attaching creditor. The defence was, that the mortgage, falling within the provisions of s. 210 of the Act, was void as against the attaching creditor and those claiming under him. For the mortgagee it was contended that the attachment could not prevail, it not having been proved affirmatively that the requirements of s. 239, relating to the intimation of the attachment, had been complied with. *Held* that this objection to the validity of the attachment could not be raised for the first time in this appeal, even if it was not rather for the mortgagee, seeking to deprive the attaching creditor of his possession, to prove the non-observance of the formalities in question. *Semle*.—A re-attachment of property after decree does not imply an abandonment of an attachment obtained before decree.—*Ramkrishna Das Surrowji v. Surfunnissa Begum*, 1. L. R., 6 Cal. 129. [Feb. 28, 1880.]

The defendant obtained a decree against D, father of the plaintiffs, for satisfaction of his debt by the sale of a moiety of a village mortgaged to him by D. In execution of it he attached the mortgaged property, the attachment being made, under Act X. of 1877, s. 274, by an order prohibiting D from transferring or charging the property in any way, and all persons from receiving it from him by purchase, gift, or otherwise. The plaintiffs thereupon applied for the removal of the attachment, but their application was rejected. They then sued for a declaration of their right to two-thirds of the property. The District Judge, who tried the suit, rejected it on the ground that it was barred by Act I. of 1877, s. 42, because the plaintiffs might have sought further relief than a mere declaration of title, and omitted to do so. He was of opinion that the attachment constituted a dispossession, and that the plaintiffs might have asked to be replaced in possession, or, at any rate, for the removal of the attachment. *Held* by the High Court on appeal that the plaint was not open to objection on the ground that it only asked for a declaratory decree, without any consequential relief; that the prohibitory order to D did not constitute a dispossession of D, and still less of the plaintiffs; and that they could not have properly asked for removal of the attachment by a cancellation of the prohibitory order to D so long as they admitted that D had an interest in the attached property; and also that the plaintiffs could not have properly asked for any consequential relief in their suit, but that, when they instituted it, they were entitled, and, indeed, bound to ask for a declaration of their right, if only to prevent a purchaser at the sale, under the defendant's decree against D, from afterwards alleging that he had purchased without notice of the plaintiff's claim.—*Narayanrao Dāmodar Dābhalkar v. Balkrishna Mahādev Gadre*, 1. L. R., 4 Bom. 529. [June 23, 1880.]

THE proclamation of sale required, by s. 274 of the Civil Procedure Code, to be made at some place adjacent to the property to be sold, and the fixing up of a copy of the order in a conspicuous part of the property, are acts which must precede the posting of the notices in the Court-house as required by s. 290. Where the sale-proceeds of a portion of several parcels of property are sufficient to satisfy the decree of a judgment-creditor who has attached the property, another judgment-creditor, although he has not attached the property, is still entitled to have the remainder of the property sold to satisfy his decree under the provisions of s. 295 of the Civil Procedure Code. Three mauzas were attached in execution of decrees obtained by A and B. Prior to the sale, C, who had also obtained a decree against the owner of the land, applied for leave, to execute his decree, in order that he might participate in the sale-proceeds under s. 295 of the Civil Procedure Code. Upon the day fixed for the sale, the Deputy Commissioner was unable, through illness, to attend; and he postponed the sale for three days. Two of the mauzas were sold, and realized more than enough to satisfy the decrees of A and B. The third was then sold in satisfaction of C's decree. Upon an application by the judgment-debtor to set aside the sale on the ground of irregularity, it appeared that notice of the sale had been posted in the Court-house more than thirty days before the date fixed for the sale, but had only been published on the properties to be sold five days before that date; that notice of the existence of a mortgage on the properties, but no further particulars, was

given, and the mortgagee was allowed to purchase; and the Deputy Commissioner had accepted the reports of the Nazir and Court-peon as to the proclamation of sale, and had refused to allow the judgment-debtor to give evidence of its insufficiency. *Held* that the proclamation of sale on the property having taken place only five days prior to the date of sale, and the particulars of the mortgage not having been given, there had been such material irregularities in the publication as to entitle the judgment-debtor to give evidence of them and the other allegations made by him, in order to show that he had suffered material injury by reason of such irregularities. *Held* also that the Deputy Commissioner was not entitled to proceed upon the reports of the Nazir and Court-peon, but was bound to hear the evidence tendered by the judgment-debtor, though he was justified, under s. 291, in postponing the sale as he had done. *Held*, further, that the third judgment-creditor, who had not attached the property, was still entitled to have the sale proceeded with, and his decree satisfied under the provision of s. 295.—*Mohunt Megh Lall Pooree v. Shib Pershad Madi*, I. L. R., 7 Cal. 34. [Mar. 18, 1881.]

APPLICATION was made for the attachment, in execution of a decree, of a muafi holding belonging to the judgment-debtor. The numbers and areas given in such application as the numbers and areas of the lands comprised in such holding were the numbers and areas of certain revenue-paying lands, and were not the numbers and areas of any lands held as muafi by the judgment-debtor. The order of attachment described the property as described in the application for attachment. The judgment-debtor having alienated by sale a muafi holding belonging to him, the decree-holders sued to have such alienation set aside as void under the provisions of s. 276 of Act X. of 1877. *Held* that, having regard to the description given in the application for attachment and the order of attachment, it could not be said that the muafi holding alienated by the judgment-debtor was under attachment at the time of the alienation, and its alienation was therefore not void under s. 276 of Act X. of 1877. *Held* also that the material misdescription of the property in this case in the order of attachment protected the alienees, who were *bond fide* purchasers, from having the alienation set aside as void under s. 276, as the attachment could not, under the circumstances, be held to have been "duly intimated and made known," as required by that section.—*Gumani v. Hardwar Pandey*, I. L. R., 3 All. 698. [April 25, 1881.]

HELD that the fact of a sale of immoveable property in execution of a decree having taken place before thirty days from the proclamation of sale being made on the property had expired was not a material irregularity in the publication of the sale. *Mohunt Megh Lall Pooree v. Shib Pershad Madi* (I. L. R., 7 Cal. 34) dissented from.—*Rahchander Bahadur v. Kamta Prasad* I. L. R., 4 All. 300. [Feb. 27, 1882.]

A JUDGMENT-DEBTOR, whose property had been attached in execution of a money-decree, sold the property, and out of the price paid into Court the amount of the decree, and prayed that the attachment might be removed. While the attachment was subsisting, and prior to the sale, the holders of other money-decrees against the same judgment-debtor preferred applications, purporting to be made under s. 295 of the Civil Procedure Code, and praying that the proceeds of the sale of the property might be rateably divided between themselves and the attaching creditors. The Court refused to remove the attachment until these creditors had been paid. It was found that the sale by the judgment-debtor was a *bond fide* transaction, entered into for valuable consideration. *Held* that, inasmuch as no order for attachment of the property was passed in favour of the decree-holders in manner provided by s. 274 of the Civil Procedure Code, their claims were not entitled to the protection conferred by s. 276 against private alienations of property under attachment; that these claims were not enforceable under the attachment which was made; that the sale by the judgment-debtor was valid; and that execution of the decrees could not take place. *Per* Mahmood, J.—That s. 276 of the Civil Procedure Code, being a restriction of private rights of alienation, should be strictly construed; that before property can be subjected to such restriction, there must be a perfected attachment; that the orders passed under s. 295 did not amount to such attachment; and that, even assuming them to amount to such attachment, they not having been duly intimated and notified could not make the prohibition of s. 276 applicable to the case. *Mahadeo Dubey v. Bhola Nath Dichit* (I. L. R., 5 All. 86), *Anand Lall Dass v. Jullodhur Shaw* (14 Moore's I. A. 543), *Rameswar Singh v. Ramtanu Ghose* (4 B. L. J., A. C., 24), *Indro Chunder Baboo v. Dunlop* (10 W. R. 264), *Gobind Singh v. Zalim Singh* (I. L. R., 6 All. 33), and *Gumani v. Hardwar Pandey* (I. L. R., 3 All. 698), referred to. Also *per* Mahmood, J.—While s. 295 of the Code gives a special right to judgment-creditors as distinguished from simple creditors, it is an essential condition precedent to the exercise of that right that there should be a sale in execution, and that its result should appear in assets realized by the sale, and therefore, until the sale takes place, no such right can be enforced. *Bishen Chunder Surma Chowdhry v. Mun Mohinee Dabee* (8 W. R. 501) referred to.—*Ganga Din v. Khushali*, I. L. R., 7 All. 702. [Feb. 26, 1885.]

IN execution of a money-decree, an order was issued under s. 274 of the Civil Procedure Code for the attachment of property which was the joint ancestral estate of the judgment-debtor and his father. A copy of this order was not fixed up in the office of the Collector of the district in which the land was situate, as required by s. 274. The sale was ordered and a day fixed for sale, but in consequence of postponements made at the judgment-debtor's request, no sale took place. In the meantime the judgment-debtor died, and the decree-holder applied for execution against the father as representative of the judgment-debtor, whose interest had survived to him. *Held* that the decree-holder had, by the proceedings taken in execution during the son's lifetime, obtained rights over his interest which could not be defeated by his death before sale. *Suraj Bansi Koer v. Sheo Persad Singh* (I. L. R., 5 Cal. 148; L. R., 6 Ind. Ap. 108) followed. *Held* also that, though the defect in the manner in which the attachment was made might render the attachment ineffectual for the purpose of voiding alienations made, the attachment was effectual against the judgment-debtor, and the defect did not afford a ground for declaring the execution-proceedings ineffectual.—*Rai Balkishen v. Rai Sita Ram*, I. L. R., 7 All. 731. [Mar. 30, 1885.]

OMISSION to have a *drum* beaten as required by ss. 274 and 289 of the Civil Procedure Code (Act XIV. of 1882) *held* to be a material irregularity so as to render a sale held in execution of a decree liable to be set aside.—*Trimbak Rāvji v. Náná*, I. L. R., 10 Bom. 504. [Jan. 25, 1886.]

IN execution of a decree obtained by them against J and M, the plaintiffs attached a decree obtained by J and M against D, and on the allegation that J and M, in order to avoid the consequence of this attachment, executed a *benami* conveyance of their interest under the attached decree to B and P, and afterwards with the same object took in adjustment and satisfaction of that decree two bonds in favour of R and I respectively, by which immoveable property was pledged as collateral security, the plaintiffs attached these two bonds by prohibitory order, under s. 268 of the Civil Procedure Code, and purchased them at the sale in execution of their decree. In a suit on the bonds against D as the principal defendant with J, M, B, P, R, and I joined as parties, *held* that the plaintiffs were entitled to enforce the lien created by the bonds against the immoveable property specified in them, notwithstanding that no attachment had been made in accordance with the provisions of s. 274 of the Code; a debt secured by a mortgage lien on immoveable property not being "immoveable property" within the meaning of that section.—*Debudra Kumar Mandel v. Rup Lal Dass*, I. L. R., 12 Cal. 546. [Feb. 5, 1886.]

S. 273 of the Civil Procedure Code (Act X. of 1877) having expressly provided a mode for the attachment of decrees, the procedure laid down in s. 274 relating to immoveable property has no application to the attachment of a decree for redemption. Under s. 316 of the Civil Procedure Code (Act X. of 1877), the title of a purchaser at a Court-sale becomes complete upon his payment of the purchase-money and confirmation of the sale by the Court. When the sale is admitted, production of a certificate is not necessary to prove that fact.—*Naigar Timápá v. Bháskar Parmaya*, I. L. R., 10 Bom. 444. [Mar. 11, 1886.]

THE interest of the obligee in a bond hypothecating certain land as security for a debt having been attached under s. 274 of the Code of Civil Procedure and sold, a suit was brought by the purchaser upon the said bond. It was objected that the suit was not maintainable because the bond had not been also attached as a debt under s. 268. *Held* that the fact of the bond not having been attached as a debt under s. 268 did not affect the right of the purchaser to realize the amount due under it.—*Sámi v. Krishnasámi*, I. L. R., 10 Mad. 169. [Dec. 16, 1886.]

275. If the amount decreed with costs, and all charges and expenses

Extending to
Provincial S.
C. Courts.

Order for withdrawal of attachment after satisfaction of decree.

resulting from the attachment of any property, be paid into Court, or if satisfaction of the decree be otherwise made through the Court, or if the decree is set aside or reversed, and order shall be issued, on the application of any person interested in the property, for the withdrawal of the attachment.

276. When an attachment has been made by actual seizure or by

Private alienation of property after attachment to be void.

written order duly intimated and made known in manner aforesaid, any private alienation of the property attached, whether by sale, gift, mortgage, or otherwise, and any payment of the debt or dividend, or a delivery of the

share, to the judgment-debtor during the continuance of the attachment, shall be void as against all claims enforceable under the attachment.

WHERE certain immoveable property having been attached, the execution-case was subsequently struck off the file, and the judgment-debtor applied again for attachment of the same property, *held*, looking to the particular circumstances of the case, that a private alienation of the property, after the date of such application, but before attachment, was not void under the provisions of s. 240 of Act VIII. of 1859. The principle of the High Court's decision in *Ahmed Hossain Khan v. Muhammed Azeem Khan* (H. C. R., N. W. P., 1869, p. 51) followed.—*Zaib-un-nissa v. Jairam Gir*, I. L. R., 1 All. 616. [Mar. 4, 1878.]

CERTAIN land was attached in the execution of a decree in the manner required by s. 235 of Act VIII. of 1859, but a copy of the order of attachment was not, as required by s. 239 of that Act, fixed up in a conspicuous part, or in any part at all, of the Court-house of the Court executing the decree; nor was it sent to, or fixed up in, the office of the Collector of the district in which the land was situated. Subsequently to the attachment of the land, the judgment-debtor privately alienated it by sale. *Held* that as the attachment had not been made known as prescribed by law, the provisions of s. 240 of Act VIII. of 1859 did not apply, and the sale was not null and void. *Indarchander v. Agra and Masterman's Bank* (10 W. R. 264; 1 B. L. R., S. N., 20) followed.—*Nur Ahmad v. Altaf Ali*, I. L. R., 2 All. 58. [Nov. 13, 1878.]

THE title obtained by the purchaser on a private sale of property in satisfaction of a decree differs from that acquired upon a sale in execution. Under a private sale, the purchaser derives title through the vendor, and cannot acquire a title better than his. Under an execution-sale, the purchaser, notwithstanding that he acquires merely the right, title, and interest of the judgment-debtor, acquires that title, by operation of law, adversely to the judgment-debtor, and freed from all alienations and incumbrances effected by him, after the attachment of the property sold. In 1858, the respondent obtained a decree against B. In 1863, in satisfaction thereof, he caused to be attached a decree for mesne-profits made in favour of B against the appellants in 1860. In May 1865, the respondent obtained an order for the sale thereof; but instead of proceeding to execution-sale, he purchased, in 1866, the whole of the mesne-profits due under the decree of 1860 by private sale from B. Meanwhile, in September 1865, an order of Court had been made, between B and the appellants, on their consent (but without the respondent being a party to it), whereby the decree for mesne-profits was set off, *pro tanto*, against a prior decree for a larger amount, which the appellants had obtained against B. *Held* that the sale of 1866, having been a private one, and not in process of execution, the respondent only obtained such title as B had in the decree of 1860—*viz.*, a title subject to the effect of the order of September 1865.—*Dinendronath Sannial v. Ram Kumar Ghose, Tarachander Bhattacharjia v. Baikantnath Sannial*, I. L. R., 7 Cal. 107. [Jan. 26, 1880.]

A SUIT on a mortgage foreclosed under Reg. XVII. of 1806, s. 8, comprising property attached before the date of the mortgage under s. 81 and the following sections of Act VIII. of 1859, was brought against the purchaser of the attached property, which had been sold under the decree obtained by the attaching creditor. The defence was, that the mortgage, falling within the provisions of s. 240 of the Act, was void as against the attaching creditor and those claiming under him. For the mortgagee it was contended that the attachment could not prevail, it not having been proved affirmatively that the requirements of s. 239, relating to the intimation of the attachment, had been complied with. *Held* that this objection to the validity of the attachment could not be raised for the first time on this appeal, even if it was not rather for the mortgagee, seeking to deprive the attaching creditor of his possession, to prove the non-observance of the formalities in question. *Semble*.—A re-attachment of property after decree does not imply an abandonment of an attachment obtained before decree.—*Ramkrishna Das Surrowji v. Surfunnissa Begum*, I. L. R., 6 Cal. 129. [Feb. 28, 1880.]

AN attaching creditor has not, as such, any right to redeem a mortgage subsisting prior to his attachment.—*Soobhul Chunder Paul v. Nitye Churn Bysack*, I. L. R., 6 Cal. 663. [Aug. 21, 1880.]

A RENEWAL of mortgage already existing on the property prior to attachment, which does not enhance the charge, is not an alienation within the meaning of s. 276 of the Code of Civil Procedure.—*Mahadevappa v. Srinivasa Rau*, I. L. R., 4 Mad. 417. [Jan. 23, 1881.]

APPLICATION was made for the attachment in execution of a decree of a muafi holding belonging to the judgment-debtor. The numbers and areas given in such application as

the numbers and areas of the lands comprised in such holding were the numbers and areas of certain revenue-paying lands, and were not the numbers and areas of any lands held as *muafi* by the judgment-debtor. The order of attachment described the property as described in the application for attachment. The judgment-debtor having alienated by sale a *muafi* holding belonging to him, the decree-holders sued to have such alienation set aside as void under the provisions of s. 276 of Act X. of 1877. *Held* that, having regard to the application for attachment and the order of attachment, it could not be said that the *muafi* holding alienated by the judgment-debtor was under attachment at the time of the alienation, and its alienation was therefore not void under s. 276 of Act X. of 1877. *Held* also that the material misdescription of the property in this case in the order of attachment protected the alienees, who were *bond fide* purchasers, from having the alienation set aside as void under s. 276, as the attachment could not, under the circumstances, be held to have been "duly intimated and make known," as required by that section.—*Gumani v. Hadwar Pandey*, I. L. R., 3 All. 698. [April 25, 1881.]

By agreement between L and Q, the parties to a suit, the matters in difference between them were referred to arbitration. An award was made directing that L should transfer certain property to Q by way of sale. Between the day the award was made and the day a decree was made in accordance with the award such property was attached in execution of a decree against L. After the attachment L, in compliance with the decree made in accordance with the award, executed a conveyance of such property to Q. *Held* by the Full Bench (affirming the decision of Straight, J., and reversing that of Spankie, J.) that such conveyance was not a "private alienation" in the sense of s. 276 of Act X. of 1877, and was therefore not void under that section as against a claim enforceable under such attachment.—*Qurban Ali v. Ashraf Ali*, I. L. R., 4 All. 219. [Jan. 18, 1882.]

A PRIVATE alienation of property under attachment is void under s. 276 of the Civil Procedure Code, "as against all claims enforceable under the attachment" only. *Held*, therefore, where property attached in execution of a decree was alienated, and was, after such alienation, again attached, the first attachment having expired, and was brought to sale in pursuance of the second attachment, and the purchaser sued for possession of the property, claiming on the ground that the alienation of the property was void under the provisions of s. 276, that as no claim was enforced or was enforceable under the first attachment, under which the property was alienated, but the purchaser was claiming under the second attachment, such alienation could not be assailed under the provisions of s. 276.—*Gobind Singh v. Zalim Singh*, I. L. R., 6 All. 33. [July 19, 1883.]

A JUDGMENT-DEBTOR, whose property had been attached in execution of a money-decree, sold the property, and out of the price paid into Court the amount of the decree, and prayed that the attachment might be removed. While the attachment was subsisting, and prior to the sale, the holders of other money-decrees against the same judgment-debtor preferred applications, purporting to be made under s. 295 of the Civil Procedure Code, and praying that the proceeds of the sale of the property might be rateably divided between themselves and the attaching creditors. The Court refused to remove the attachment until these creditors had been paid. It was found that the sale by the judgment-debtor was a *bond fide* transaction, entered into for valuable consideration. *Held* that, inasmuch as no order for attachment of the property was passed in favour of the decree-holders in manner provided by s. 274 of the Civil Procedure Code, their claims were not entitled to the protection conferred by s. 276 against private alienations of property under attachment; that these claims were not enforceable under the attachment which was made; that the sale by the judgment-debtor was valid; and that execution of the decrees could not take place. *Per* Mahmood, J.—That s. 276 of the Civil Procedure Code, being a restriction of private rights of alienation, should be strictly construed; that before property can be subjected to such restriction, there must be a perfected attachment; that the orders passed under s. 295 did not amount to such attachment; and that, even assuming them to amount to such attachment, they not having been duly intimated and notified could not make the prohibition of s. 276 applicable to the case. *Mahadeo Dubey v. Bhola Nath Dicit* (I. L. R., 5 All. 86), *Anand Lall Dass v. Jullodhur Shaw* (14 Moore's I. A. 543), *Rameswar Singh v. Ramtanu Ghose* (4 B. L. R., A. C., 24), *Indro Chunder Baboo v. Dunlop* (10 W. R. 264), *Gobind Singh v. Zalim Singh* (I. L. R., 6 All. 33), and *Gurmani v. Hardwar Pandey* (I. L. R., 3 All. 698), referred to. Also *per* Mahmood, J.—While s. 295 of the Code gives a special right to judgment-creditors as distinguished from simple creditors, it is an essential condition precedent to the exercise of that right that there should be a sale in execution, and that its result should appear in assets realized by the sale, and therefore, until the sale takes place, no such right can be enforced. *Bishen Chunder Surma Chowdhry v. Man Mohinee Dabee* (8 W. R. 501) referred to.—*Ganga Din v. Khushali*, I. L. R., 7 All. 702. [Feb. 23, 1885.]

WHERE a vesting order has been made under 11 & 12 Vict., c. 21, s. 7, after attachment and before decree, the title of the Official Assignee takes effect and prevents the attaching creditor from obtaining satisfaction of his decree by a sale. *Shib Kristo Shaha Chowdhry v. Miller* (I. L. R., 10 Cal. 150) and *Gamble v. Bholagiri* (2 Bom. H. C. R. 150) followed.—*Sadayappa v. Ponnama*, I. L. R., 8 Mad. 554, [May 2, 1885.]

THE interest of a tenant in certain land having been attached by his creditor in execution of a decree for money, the landlord attached the same land for arrears of rent, brought it to sale, and purchased it under the provisions of the Rent Recovery Act. The creditor subsequently purchased the interest of the tenant, which was sold in execution of his decree. In a suit by the landlord to have the sale to the creditor declared invalid, *held* that the landlord's purchase was subject to the creditor's attachment.—*Subramanya v. Rajaram*, I. L. R., 8 Mad. 573. [July 30, 1885.]

277. If the property attached is coin or currency-notes, the Court may, Extending to Provincial S. C. Courts.

Court may direct coin or currency-notes attached to be paid to party entitled.

at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

278. If any claim be preferred to, or any objection be made to the attachment of, any property attached in execution

Ditto.

Investigation of claims to, and objections to attachment of, attached property.

of a decree, on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit :

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

If the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

Postponement of sale.

A DECREE-HOLDER, by a prohibitory order issued under Act X. of 1877, s. 268, attached a debt due to his judgment-debtor. This person, served with the order, applied under s. 278 to have the attachment removed. *Held* that the application could not be entertained under s. 278, that section having no application to the case ; but that, before issuing a proclamation of sale, in execution of a decree, of the debt so attached, it is the duty of the Court, under s. 287, to ascertain all that the Court considers it material for the intending purchaser to know in order to judge of the nature and value of the property proclaimed for sale. If the property, of which sale is sought, is a debt, and the Court receives notice from the alleged debtor that no debt exists, the Court should satisfy itself as to the existence, or otherwise, of the debt, and, if it comes to the conclusion that no debt exists, should abstain from proceeding to sale.—*Harilal Amthabhai v. Abhesang Meru*, I. L. R., 4 Bom. 323. [Jan. 6, 1880.]

AN objection was made to the attachment of certain property in the execution of a decree by the judgment-debtor, on the ground that such property was in his possession, not as his own property, but on account of an endowment. This objection was one of the nature to be dealt with under Act X. of 1877, s. 278 and the following sections. The Court executing the decree made an order against the decree-holder releasing the property from attachment. *Held* that such order was not appealable, the fact that the objection was made by the judgment-debtor notwithstanding, and the decree-holder's proper remedy was to institute a suit under Act X. of 1877, s. 283.—*Shankar Dial v. Amir Faldar*, I. L. R., 2 All. 752. [Feb. 24, 1880.]

THE holders of a taluq hypothecated certain other property belonging to them as security for the rent. A decree for rent was obtained against them. Prior to attachment, the taluqdars assigned their interest in eight annas of the hypothecated property to A, and made a mourosi lease of the remaining eight annas to him. The decree-holder then obtained an order for summary sale for the rent due for 1876-77. She then attempted to sell the property hypothecated to her. An objection by A was allowed. A regular suit was then instituted by the decree-holder against A; and it was declared that she was, after selling the taluq, entitled to sell the hypothecated property. The decree-holder again

attempted to execute her rent-decree by attaching and selling the hypothecated property, and an objection by A was disallowed. *Held* that no appeal lay from the order disallowing the objection, as A could not be considered to be a 'representative' of the taluqdars within the meaning of s. 244 (cl. c) of the Civil Procedure Code, and was, therefore, debarred from appealing under ss. 278 and 283.—*Rashbehary Mookhopadhya v. Maharani Surnomoyee*, I. L. R., 7 Cal. 403. [May 13, 1881.]

UNDER ss. 289 and 274 of the Civil Procedure Code, it is necessary that a copy of the sale-proclamation should be affixed to some conspicuous place on the property attached; and the omission to do so is a material irregularity within the meaning of s. 311 of the Code of Civil Procedure. If it is proved that the price obtained for property sold at an execution-sale is greatly inadequate, and if it be also proved that there has been a material irregularity in publishing or conducting the sale, the Court will presume that the irregularity was the cause of the inadequacy of price, until proof is given to the contrary.—*Kalytara Chowdharin v. Ramcoomar Goopta*, I. L. R., 7 Cal. 466. [May 25, 1881.]

WHERE a person whose property has been attached in execution of a decree against another person, and whose claim under s. 246 of Act VIII. of 1859 has been rejected, brings a suit under the provisions of s. 247 of Act VIII. of 1859, it is no objection to that suit that, previously to the filing thereof, the decree (in execution of which the property had been attached) was satisfied by the judgment-debtor, and the property released from attachment.—*Sreeputty Mirdha v. Kartick Singha*, I. L. R., 9 Cal. 10. [May 5, 1882.]

THE consideration for a mortgage consisted partly of the amount of two decrees held by the mortgagee against the mortgagor. The mortgagee having sued to enforce the mortgage, the mortgagor pleaded failure of consideration as a bar to the enforcement of the mortgage. This plea was based on the allegation that the mortgagee had not certified the adjustment of the decrees as provided by s. 258 of the Civil Procedure Code, and they were still in force under the terms of that section. *Per* Duthoit, J., that the failure of the mortgagee to certify the adjustment of the decrees did not constitute a failure of consideration, because he did not covenant to certify such adjustment, and it was not, in fact, necessary for him to do so; because he could not seek execution of the decrees on the ground that, though unsatisfied, they were still in force under s. 258 of the Civil Procedure Code, without becoming liable to penalties; and because, if the mortgagor considered the entering up of the adjustment of the decrees to be imperative, he had his remedy by application to the Court in the terms of s. 258. *Per* Mahmood, J., that the adjustment of a decree out of Court, if never certified to the Court, is, under s. 258, ineffectual only so far as the execution of the decree is concerned; that there is nothing in the Contract Act to make such an adjustment invalid as the consideration for an agreement; that an agreement founded on such consideration may be enforced without defeating the objects of s. 258; and that consequently there was, in respect of the amount of the decrees, valid consideration for the mortgage. *Gunamani Dasi v. Pran Kishori Dasi* (5 B. L. R. 223; 13 W. R. 69), *Meer Mahomed Kazem Jowharry v. Khetoo Bibee* (20 W. R. 150), *Guni Khan v. Koonjo Bahary Sein* (3 C. L. R. 414), *Davlat v. Ganesh Shashtri* (I. L. R., 4 Bom. 295), *Shadi v. Ganga Sahai* (I. L. R., 3 All. 538), and *Sita Ram v. Mahipal* (I. L. R., 3 All. 533), followed. *Patankar v. Devji* (I. L. R., 6 Bom. 146) and *Pundrang Ramchandra Chowghule v. Narayan* (I. L. R., 8 Bom. 300) dissented from.—*Ramghulam v. Janji Rai*, I. L. R., 7 All. 124. [Aug. 15, 1884.]

A AND B attached, in execution of their decree, property of C and his two brothers, their judgment-debtors. Subsequently D obtained a decree against C alone, and, on the 11th January 1884, applied for attachment of the one-third share of C in the property attached by A and B, which belonged to C and his two brothers jointly. No order was on that date passed on the application. On the 14th January 1884, E purchased from C his one-third share in the attached properties, and the purchase-money was, by arrangement between the brothers, applied in satisfying the debt due to A and B. On the 28th January 1884, an order was passed on the application of the 11th January 1884, granting the attachment asked for by D. And on the 23rd April 1884, E preferred his claim to the one-third share purchased by him, and which had been since the purchase attached by D. The claim was disallowed on the ground that E had no title to the property, he having purchased whilst the property was under attachment. *Held* on appeal that the Judge should have, in accordance with s. 280 of the Code of Civil Procedure, confined himself to determining whether or no the property was in the possession of E on his own account at the time that D attached the property.—*Koylash Chunder Sen v. Koylash Chunder Chakrabarti*, I. L. R., 10 Cal. 1057. [Aug. 26, 1884.]

HELD that an objection made by one whose property was attached and sold in execution of a decree for the payment of money for the performance of which he had become a surety, that he was no party to the decree, and his property was not liable to be

attached and sold, and therefore the sale was invalid, was not an objection entertainable under s. 311 of the Civil Procedure Code, and was consequently no ground for setting aside the sale under that section, especially as it was preferred for the first time in appeal, and, moreover, might have been taken under s. 278 at the time of attachment, when the objector would have had his remedy as therein provided.—*Hub Lal v. Kanhia Lal*, I. L. R., 7 All. 365. [Feb. 4, 1885.]

Held that persons other than the decree-holders or the persons whose property was sold in execution of decree were not competent to apply to the Court under s. 311 of the Civil Procedure Code to set aside the sale. M, in whose name property had been purchased at an execution-sale which was improperly set aside, brought a suit to have the order setting aside the sale reversed, and the sale confirmed in her favour, and for a declaration that the property was not liable to be sold in execution of a decree of the defendants against third persons, under which it had been attached and advertized for sale, *held* that such a suit could only be maintained under s. 42 of the Specific Relief Act (1 of 1877), but that s. 244 of the Civil Procedure Code indicated the intention of the Legislature that such questions should be determined in the execution department, and, reading together the provisions of ss. 244, 278, and 283 of the Code, the suit was premature, and therefore not maintainable.—*Man Kuar v. Tara Singh*, I. L. R., 7 All. 583. [Mar. 24, 1885.]

A DECREE-HOLDER, having attached the property of his judgment-debtors in execution of the decree, obtained an order for sale of the attached property. Prior to sale, the judgment-debtors made an application to be declared insolvents, and obtained an order under Stat. 11 and 12 Vic., c. 21, s. 7, by which their property was vested in the Official Assignee. An application was then made by the Official Assignee to the Court in which the execution of the decree was pending, for the release of the property from attachment, and that the property might be made over to him. The Court dismissed the application. On appeal, the District Judge reversed the first Court's order. *Held* that the matter did not come before the Court of first instance under s. 49 of Stat. 11 and 12 Vic., c. 21, inasmuch as that section refers to cases where the insolvent's schedule has been filed, and to debts or demands admitted therein, and, in the present case, no schedule had been filed at the time of the Official Assignee's application; and the Court could therefore only entertain the application under the provisions of the Civil Procedure Code relating to the execution of decrees. *Held* that the Official Assignee could not be held to be a representative of the judgment-debtors within the meaning of s. 244 of the Civil Procedure Code, and his application was not one relating to the execution, discharge, or satisfaction of the decree. *Held* that the Court of first instance had only jurisdiction in the matter under s. 278 of the Code, and disposed of it under that section, and that the District Judge had no jurisdiction to entertain the appeal.—*Kashi Prasad v. Miller*, I. L. R., 7 All. 752. [April. 16, 1885.]

SUITS under s. 283 of the Code, although they are brought for the purpose of establishing rights which have been negatived in execution-proceedings, are neither described in the Code nor are dealt with in practice, as appeals from the orders of lower Courts; they are substantive suits to all intents and purposes, and must be tried like any other suits subject to the ordinary rules of procedure and evidence. There is nothing in the provisions of ss. 278 to 283 of the Code limiting in a suit under s. 283 a plaintiff's right to compensation for his loss, or the defendant's responsibility for his wrongful act; and if the existence of the summary procedure (in ss. 278 to 282) leads to delay, and that delay to further loss, the consequences must fall upon the defendant.—*Kishori Mohun Rai v. Hursook Dass*, I. L. R., 12 Cal. 696. [Mar. 13, 1886.]

A JUDGMENT-CREDITOR of the plaintiff having obtained a decree against the plaintiff, attached the house in dispute. The defendant intervened in 1878, and set up a previous purchase of the house by himself from the plaintiff. The attachment was removed. The judgment-creditor brought a suit against the defendant for declaration that the property belonged to the plaintiff, and, as such, was liable to be attached and sold in execution. At the hearing of this suit the judgment-creditor did not appear. The defendant appeared, and produced a sale-deed, which the Court found proved, and dismissed the judgment-creditor's suit. The plaintiff now brought the present suit against the defendant to recover possession of the house. The defendant contended (*inter alia*) that the dismissal of the former suit, brought by the plaintiff's judgment-creditor, operated as *res judicata* under s. 13 of the Civil Procedure Code (Act XIV. of 1882). Both the lower Courts disallowed the defendant's contention, holding that the suit was not barred. On appeal by the defendant to the High Court, *held*, confirming the lower Court's decree, that the dismissal of the former suit did not operate as *res judicata* in the absence of any evidence to show that the judgment-creditor, in point of fact, represented the plaintiff so as to constitute him a party to the suit. It was contended for the defendant

that the plaintiff, as the judgment-debtor, might, at any rate, be regarded as a party against whom the order in the execution-proceedings in 1878 was made, and that the present suit was, therefore, barred by limitation. *Held* that the plaintiff could not be regarded as a party to those proceedings. Whether a judgment-debtor is to be regarded as a party to an investigation under s. 278 of the Code, must depend upon the facts of each case. As the question of limitation was raised for the first time in second appeal, it could not be decided against the plaintiff.—*Shivāpa v. Dod Nāgaya*, I. L. R., 11 Bom. 114. [Sep. 14, 1886.]

WHERE property has been made the subject of attachment under Chap. XIX. of the Civil Procedure Code, the right of an objector to assert his claim to be the true owner of the property under s. 278, and the jurisdiction of the Court to entertain the objection, are not ousted by the mere circumstances that the judgment-debtor has been declared an insolvent, and his property vested in a Receiver under Chap. XX. It is the judgment-debtor's property only, not that of the objector, that is thus vested.—*Paras Ram v. Karam Singh*, I. L. R., 9 All. 232. [Jan. 11, 1887.]

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279. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of the property attached.

AN order striking off an objection to the attachment of property attached in execution of decree for default of prosecution is not "conclusive" as regards the right which the objector claimed to the property within the meaning of s. 283 of Act X. of 1877. *Held*, therefore, where a person objected to the attachment of certain moveable property attached in execution of a decree, claiming it as his own, and his objection was struck off for default of prosecution, that such person might sue for damages for the wrongful attachment of such property without suing to establish the right which he claimed thereto.—*Kallu Mal v. Brown*, I. L. R., 3 All. 504. [Jan. 31, 1881.]

Ditto.

280. If, upon the said investigation, the Court is satisfied that, for the reason stated in the claim or objection, such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall pass an order for releasing the property, wholly or to such extent, as it thinks fit, from attachment.

IN a suit upon a mortgage upon a house, one of the defendants alleged in his written statement that he had purchased the house at an auction-sale in execution of a decree against his co-defendants, but that he had since sold and conveyed the same to A, who had been put into and had held possession from the time of the sale to her, and further that the mortgage was collusive. A was not made a party to the suit. The plaintiff obtained a decree, and proceeded to execute it by attachment and sale of the house. A thereupon objected that the house was not liable to be attached and sold in execution of a decree in a suit to which she was not a party, and alleged that it had been purchased and held by her prior to the suit, and that the mortgage-bond was fraudulent collusive. The Munsif dismissed her petition, on the ground that she was bound by the decree, her vendor having been made a party to the suit. *Held* that the Munsif was bound to have investigated her claim according to the provisions of ss. 278-280 of Act X. of 1877.—*Mussammat Jameela v. Luchmun Panday*, 4 C. L. R., 74. [Mar. 12, 1879.]

S. 283 of the Civil Procedure Code enables a party, against whom an order has been made in execution-proceedings, to bring a suit to establish his rights, whatever they may be; but it says nothing as to the nature of the suit, or the Court in which it is to be brought. Whether the party is to sue in the Civil Court, or in the Small Cause Court, depends entirely upon the nature of the claim and the right which is sought to be enforced. Where goods have been illegally seized and sold in execution, a suit by the owner thereof against the purchaser for the goods or their value will lie in a Small Cause Court, if the value of the goods is within the amount limited by law for the jurisdiction of such Court; but if the plaintiff makes the decree-holder and the judgment-debtor parties to the suit, and requires a declaration of his right to the property, such a suit will not lie in the Small

Cause Court. A suit for a declaration of right by a person against whom an order has been passed under s. 280 of the Civil Procedure Code will not lie in the Small Cause Court.—*Shiboo Narain Singh v. Mudden Ally*, I. L. R., 7 Cal. 608. [June 23, 1881.]

S. 238 does not constitute an exception to the procedure laid down by s. 545. Where property has been released from attachment under s. 280, and subsequently declared liable to attachment by a decree against which an appeal is pending, as sale of such property before the final result of the appeal is not illegal by virtue of the provisions of s. 283.—*Fathula v. Muniyappa*, I. L. R., 6 Mad. 98. [Oct. 13, 1882.]

AN objection to the attachment of property attached in execution of a decree was allowed, the decree-holder being ordered to pay the costs of the objector. The decree-holder thereupon brought a suit to contest the order allowing the objection. He did not seek in this suit relief in respect of the costs. He obtained a decree setting aside the order allowing the objection. He then applied to the Court which had made the order to order a refund of the amount of the costs which had been paid to the objector. *Held* that the application being regarded as one with regard to a portion of an order made under s. 280 of the Civil Procedure Code, the Court was *functus* in the matter, and could not make or enforce such an order as was sought for; and that its order disallowing the application was not appealable, as it was not one made under s. 244, and if taken to be one passed with reference to s. 280, an appeal was barred by s. 283.—In the Matter of the Petition of *Baghu Nath Das v. Badri Prasad*, I. L. R., 6 All. 21. [July 4, 1883.]

281. If the Court is satisfied that the property was, at the time it was attached, in possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim. Extending to Provincial S. C. Courts.

S. 283 of the Civil Procedure Code enables a party, against whom an order has been made in execution-proceedings, to bring a suit to establish his rights, whatever they may be; but it says nothing as to the nature of the suit, or the Court in which it is to be brought. Whether the party is to sue in the Civil Court, or in the Small Cause Court, depends entirely upon the nature of the claim and the right which is sought to be enforced. Where goods have been illegally seized and sold in execution, a suit by the owner thereof against the purchaser for the goods or their value will lie in a Small Cause Court, if the value of the goods is within the amount limited by law for the jurisdiction of such Court; but if the plaintiff makes the decree-holder and the judgment-debtor parties to the suit, and requires a declaration of his right to the property, such a suit will not lie in the Small Cause Court. A suit for a declaration of right by a person against whom an order has been passed under s. 280 of the Civil Procedure Code will not lie in the Small Cause Court.—*Shiboo Narain Singh v. Mudden Ally*, I. L. R., 7 Cal. 608. [June 23, 1881.]

THE holder of a decree against a firm caused certain property to be attached in execution of the decree as the property of the firm. One of the partners in the firm objected to the attachment, on the ground that such property was not the property of the firm, but was his private property. The Court disallowed the objection, whereupon such partner appealed from the order disallowing the objection. *Held* that such order was not one under s. 244 (c) of Act X. of 1877, but under s. 281, and was therefore not appealable.—*Abdul Rahman v. Muhammad Yar*, I. L. R., 4 All. 190. [Jan. 3, 1882.]

A SUIT under s. 283 of the Civil Procedure Code by a party against whom an order under s. 281 has been passed to establish his right to moveable property attached in execution of a decree passed by a Civil Court, and for such property, the same being less than Rs. 500 in value, is not a suit cognizable in a Court of Small Causes.—*Ilahi Baksh v. Sita*, I. L. R., 5 All. 462. [April 23, 1883.]

THE heirs of the deceased obligor of a bond were sued thereon on the ground that they were in possession of the property of the deceased, and a decree was made in this suit for the recovery of the amount claimed "from the property of the deceased." In execution of this decree the plaintiff caused certain property to be attached as belonging to the deceased. The defendants objected to the attachment on the ground that the property belonged to them. The Court executing the decree proceeded to investigate this objection, and, finding that the property did not belong to the defendants, but to the deceased, disallowed it. *Held* that the proceedings upon such objection were taken under s. 281 of the Civil Procedure Code, and the order disallowing it was therefore not appealable.—*Awadh Kuari v. Baktu Tiwari*, I. L. R., 6 All. 109. [Nov. 20, 1883.]

IN certain execution-proceedings land was attached, but before the sale the judgment-debtors, with the permission of the Court, sold the land to the plaintiffs. Previous to this sale, certain persons had come forward in the execution-proceedings, and had claimed the land as having been sold to them by the father of the judgment-debtors; this claim was disallowed in November 1873. In 1881 the plaintiffs, alleging that they had been dispossessed by certain persons, amongst whom were the claimants in the execution-proceedings, brought a suit to recover possession of this land against these persons. This suit was decided against the plaintiffs in the lower Appellate Court, on the ground that they had failed to prove that they had been in possession of the land 12 years before suit. On appeal to the High Court the plaintiffs, appellants, contended that the claim of the defendants in the execution-proceedings having been rejected, and they not having brought a regular suit within one year from the order of rejection to establish their right to possession, the defendants were prevented by that order from contending that the plaintiffs had not been in possession at the time of that order. *Held* that the order did not operate as an estoppel against the defendants; and even if it could so operate, it would not do so until the time had run out, within which they could have brought a suit to establish their right to possession, and that such time had not expired.—*Gend Lall Tewari v. Denonath Ram Tewari*, I. L. R., 11 Cal. 673. [June 11, 1885.]

THE order contemplated by s. 281 of the Code of Civil Procedure is an order made after investigation into the facts of the case, and it is only when the order is made after such investigation that the limitation of one year is applicable to a subsequent suit under s. 283 of the Civil Procedure Code.—*Chandra Bhusan Gangopadhyaya v. Ram Kunth Banerji*, I. L. R., 12 Cal. 108. [July 1, 1885.]

Extending to
Provincial S.
C. Courts.

282. If the Court is satisfied that the property is subject to a mortgage or lien in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or lien.

AN attaching creditor has not, as such, any right to redeem a mortgage subsisting prior to his attachment.—*Socbhul Chunder Paul v. Nitye Churn Bysack*, I. L. R., 6 Cal. 663. [Aug. 21, 1880.]

Ditto.

283. The party against whom an order under section 280, 281, or 282, is passed, may institute a suit to establish the right to attached property, which he claims to the property in dispute, but, subject to the result of such suit (if any), the order shall be conclusive.

A OBTAINED a money-decree against B, and attached certain lands in execution. C subsequently claimed possession of the property, which the Court thereupon released under s. 246, Act VIII. of 1859, leaving the plaintiff to establish his right by a regular suit brought within the prescribed period. A did not bring a suit within such period, but having, in the meantime, obtained a second decree against B on a different cause of action, attached the lands a second time. The property was again released on C's application, and A now sued to have his right declared to attach the lands in execution of the second decree. The lower Courts dismissed the suit, holding that A could not raise in the second suit a question which he had the opportunity of raising, but did not, in the first suit. On appeal, *held* that the suit was maintainable, the principle of *res judicata* not applying. *Held* also that an order under s. 246 was invalid, where the question of possession, under that section, had not previously been investigated. Whether a correct conclusion had been arrived at in such investigation, was immaterial so far as concerned the validity of the order.—*Paidāvenkamma v. Aiyangari Kenkatra Maiya*, 4 Ind. Jur. 397.

PLAINTIFF, in May 1877, attached certain immoveable property of defendants, against whom he held an ordinary money-decree, and obtained an order for its sale in satisfaction of the decree. In July 1877, defendant's infant sons presented a petition to the lower Court, praying to have two-thirds of the property, to which they were entitled, released. The petition did not allege that such infants were in possession, and, on the 18th July, was rejected by the lower Court, on the ground that possession of the property attached was in the defendant. The property was sold; and plaintiff, who was the purchaser at the public sale, was put in possession, by order of the Court, on the 22nd October 1877. On the 8th November 1877, the defendant's minor sons presented a second petition to the same Court, purporting to be under s. 332, Act X. of 1877, upon which the Court, recording the evidence of the mother, that there had been joint possession, decided that the purchaser was not entitled to dispossess the infants, and cancelled the former delivery of posses-

sion. On appeal, the lower Appellate Court decided that the Munsif's order of the 18th July was final, and set aside that of the 21st November as *ultra vires*. Defendant's sons appealed, contending (1) that the Munsif's order of the 18th July 1877, having been passed without any investigation, was not an order under s. 246, Act VIII. of 1859, and therefore not final; (2) that the petition filed on the 8th November should be treated as an application under s. 376, Act VIII. of 1859, for review of judgment made in the order of 18th July; and (3) that the Munsif's order of the 21st November was one which he had power to make in review of his order for execution passed on the 22nd October 1877.

Held (1) that the Munsif's order of the 18th July must be considered to have been under s. 246, Act VIII. of 1859, and final on the question of possession, except in respect of a regular suit; (2) that the application of the 8th November, treated as an application for review of judgment under s. 376, Act VIII. of 1859, was not admissible, it not having been made within the limited period (s. 377); (3) that the Munsif had no jurisdiction to review his order for execution of the 22nd October on the application of the defendants, inasmuch as that order was not an order against them; and, under s. 623, they could not apply for a review of it, it not being open to them except by a regular suit (s. 283) to re-agitate the question of possession decided against them by the order of 18th July.—*Ruthua Mudali v. Kakarla Ramayachetti*, 3 Ind. Jur. 264.

A SUIT brought by a defeated claimant, under Act X. of 1877, s. 283, to establish his right to, and to recover possession of, certain moveable property attached in execution of a decree of a Small Cause Court, is within the jurisdiction of, and must therefore, under Act XI. of 1865, s. 12, be instituted in, a Small Cause Court.—*Gordhan Pema v. Kasandás Balmukundás*, I. L. R., 3 Bom. 179. [Jan. 21, 1879.]

AN objection was made to the attachment of certain property in the execution of a decree by the judgment-debtor, on the ground that such property was in his possession, not as his own property, but on account of an endowment. This objection was one of the nature to be dealt with under Act X. of 1877, s. 278 and the following sections. The Court executing the decree made an order against the decree-holder releasing the property from attachment. Held that such order was not appealable, the fact that objection was made by the judgment-debtor notwithstanding, and the decree-holder's proper remedy was to institute a suit under Act X. of 1877, s. 283.—*Shankar Dial v. Amir Haidar*, I. L. R., 2 All. 752. [Feb. 24, 1880.]

IN a suit under Act X. of 1877, s. 283, for a declaration of the proprietary right to certain immovable property attached in the execution of a decree, the plaintiff asked that the property might be "protected from sale." Held that consequential relief was claimed in the suit, and court-fees were therefore leviable under Act VII. of 1870, s. 7, cl. 4 (c), and not under sch. 2, art. 17 (3).—*Ram Prasad v. Sukh Dai*, I. L. R., 2 All. 720. [Feb. 28, 1880.]

SUITS brought to set aside or to restore an attachment upon a house, in pursuance of the permission given in s. 246 of the Civil Procedure Code, may be regarded either "as suits to obtain a declaratory decree or order where consequential relief is prayed," so as to fall within s. 7, cl. 4, art. c, of the Court Fees Act (VII. of 1870), or as suits to obtain or set aside a summary decision or order, in which case the stamp-duty payable would be that prescribed by art. 17, cl. 1, sch. 2 of the Court Fees Act. The Court Fees Act being a fiscal enactment, it's the duty of the Courts to treat such suits as belonging to the latter class (it being the more favourable to the suitor), and to impose fees accordingly. Decisions under s. 246 of Act VIII. of 1859, as to the removal or retention of attachments, are "summary decisions or orders" within the meaning of art. 17, cl. 1 sch. 2 of the Court Fees Act (VII. of 1870). The words "summary decision or order" in this clause of the Court Fees Act mean decision or order not made in a regular suit or appeal. The construction which has been given to these words, or nearly similar words, in the Limitation Acts (e.g., Act IX. of 1871, sch. 2, art. 15, and Act XV. of 1877, sch. 2, art. 13), affords no guide to their construction in the Court Fees Act. When Acts are *in pari materia*, they may be treated as forming a Code, and may be read together; but when this is not so, the construction which has been put upon one cannot be relied upon as a guide to the construction of another. The valuation of suits, for the purpose of jurisdiction, is perfectly distinct from their valuation for the fiscal purpose of court-fees. Therefore, Court Fees Acts, which are fiscal enactments, are not to be resorted to for construing enactments which fix the valuation of suits for the purpose of determining jurisdiction. Motichand Jaichand v. Dada Bhai Pestonji (11 Bom. H. C. R. 186, 188, 189) explained: *Ravloji Tamaji v. Dholapa Raghu* (I. L. R., 4 Bom. 123) dissented from by Westropp, C.J. A stamp of Rs. 10 is sufficient for the plaint or memorandum of appeal in a suit brought under s. 246 of Act VIII. of 1859 to restore an attachment upon a house which has been removed at

the instance of an intervenient under that section. A person whose property was attached was not compelled to resort, in the first instance, to an application under s. 246 of the late Civil Procedure Code (Act VIII. of 1859). There was nothing to prevent him from commencing his litigation by a regular suit, if such were his pleasure. Cl. 8 of s. 7 of the Court Fees Act (VII. of 1870) would apply to such a suit. The language of that section is not limited to suits to set aside any special kind of attachments on land. It is large enough to include suits brought, in pursuance of the permission given by s. 246 of Act VIII. of 1859, to set aside attachments on lands as well as other suits for that purpose brought independently of that section. The term 'land' in cl. 8, s. 7, of the Court Fees Act, does not include a house. *Quere*.—Whether that clause includes all suits to set aside attachments upon land, or all such suits, except where the result of setting aside the attachment would be to alter or set aside a summary decision or order of any Civil Court not established by Letters Patent or of any Revenue Court? In order to enforce a decree which establishes a mortgage, and directs a sale of the mortgaged premises in satisfaction of the mortgage, it is not necessary to issue an attachment. If the decree contains, as it ought to contain, a direction for sale of the mortgaged premises, the proceeding under such a decree by attachment is unnecessary as well as expensive and dilatory. The direction for sale in the decree is in itself sufficient authority for the sale. That direction is founded on the specific lien or charge on the mortgaged premises created by the contract of mortgage, and not on the execution-clauses in the Code of Civil Procedure. —*Dyachand Nemchand v. Hemchand Dharamchand*, I. L. R., 4 Bom. 515. [June 23, 1880.]

AN order striking off an objection to the attachment of property attached in execution of a decree for default of prosecution is not "conclusive" as regards the right which the objector claimed to the property within the meaning of s. 283 of Act X. of 1877. *Held* therefore, where a person objected to the attachment of certain immoveable property attached in execution of a decree, claiming it as his own, and his objection was struck off for default of prosecution, that such person might sue for damages for the wrongful attachment of such property without suing to establish the rights which he claimed thereto.—*Kallu Mal v. Brown*, I. L. R., 3 All. 504. [Jan. 31, 1881.]

THE holders of a taluq hypotheated certain other property belonging to them as security for the rent. A decree for rent was obtained against them. Prior to attachment, the taluqdars assigned their interest in eight annas of the hypotheated property to A, and made a mourosi lease of the remaining eight annas to him. The decree-holder then obtained an order for summary sale for the rent due for 1876-77. She then attempted to sell the property hypotheated to her. An objection by A was allowed. A regular suit was then instituted by the decree-holder against A, and it was declared that she was, after selling the taluq, entitled to sell the hypotheated property. The decree-holder again attempted to execute her rent-decree by attaching and selling the hypotheated property, and an objection by A was disallowed. *Held* that no appeal lay from the order disallowing the objection, as A could not be considered to be a 'representative' of the taluqdars within the meaning of s. 244, cl. c. of the Civil Procedure Code, and was, therefore, debarred from appealing under ss. 278 and 283.—*Rashbehary Mookhopadhyaya v. Maharani Surnomoyee*, I. L. R., 7 Cal. 403. [May 13, 1881.]

S. 283 of the Civil Procedure Code enables a party, against whom an order has been made in execution-proceedings, to bring a suit to establish his rights, whatever they may be; but says nothing as to the nature of the suit, or the Court in which it is to be brought. Whether the party is to sue in the Civil Court or in the Small Cause Court, depends entirely upon the nature of the claim and the right which is sought to be enforced. A person whose goods are illegally sold under an execution does not lose his right to them, although he may have claimed them unsuccessfully in the execution-proceedings. He may follow them into the hands of the purchaser or of any other persons, and sue for them or their value without reference to anything which has taken place in the execution-proceedings, except that, under art. 11, sch. 2, Act XV. of 1877, he must bring his suit within one year from the time when the adverse order in the execution-proceedings was made. Where goods have been illegally seized and sold in execution, a suit by the owner thereof against the purchaser, for the goods or their value, will lie in a Small Cause Court, if the value of the goods is within the amount limited by law for the jurisdiction of such Court; but if the plaintiff makes the decree-holder and the judgment-debtor parties to the suit, and requires a declaration of his right to the property, such a suit will not lie in the Small Cause Court. A suit for a declaration of right by a person against whom an order has been passed under s. 280 of the Civil Procedure Code will not lie in the Small Cause Court. *Ram Dhun Biswas v. Kefal Biswas* (10 W. R. 141), *Moozdeen Gazeer v. Dinobundhoo Gossamee* (13 W. R. 99), and *Womesh Chunder Bose v. Muddun Mohan Sircar* (2 W. R. 44), discussed and explained.—*Shiboo Narain Singh v. Muddun Ally*, I. L. R., 7 Cal. 608. [June 23, 1881.]

S. 283 does not constitute an exception to the procedure laid down by s. 545. Where property has been released from attachment under s. 280, and subsequently declared liable to attachment by a decree against which an appeal is pending, a sale of such property before the final result of the appeal is not illegal by virtue of the provisions of s. 283.—*Fathula v. Muniyappa*, I. L. R., 6 Mad. 98. [Oct. 13, 1882.]

THE L Bank advanced money to C, a Hindu governed by the Mitāksharā school of law upon mortgage of ancestral property. S, who was stated to be C's only son, joined in the mortgage. Subsequently the Bank obtained a decree against C and S for the amount due on the mortgage. On attempting to sell the mortgaged property other sons of C objected. This objection was allowed, and the mortgagees referred to a regular suit. They then sued all the sons of C to establish their lien on the mortgaged property. Held that the suit was maintainable under s. 283 of the Civil Procedure Code. *Nutho Lal Chowdhry v. Shoukee Lal* (10 B. L. R. 200) and *Mussamut Dhace v. Hurry Prosad* distinguished.—*Sitanath Koer v. Land Mortgage Bank of India*, I. L. R., 9 All. 588. [April 9, 1883.]

A SUIT under s. 283 of the Civil Procedure Code by a party against whom an order under s. 281 has been passed to establish his right to moveable property attached in execution of a decree passed by a Civil Court, and for such property, the same being less than Rs. 500 in value, is not a suit cognizable in a Court of Small Cause.—*Ilahi Bakhsh v. Sita*, I. L. R., 5 All. 462. [April 23, 1883.]

A PERSON who had claimed moveable property attached in execution of a decree as his own, and whose claim had been investigated and disallowed under ss. 278 to 281 of the Civil Procedure Code, sued, the property being under attachment, the decree-holder and the judgment-debtor in a Court of Small Causes for the property or its value. Held that the suit could not properly be regarded as a suit "for personal property or for the value of such property," within the meaning of s. 6 of Act XI. of 1865, but must be regarded as a suit to establish the plaintiff's right, in the sense of s. 283 of the Civil Procedure Code, inasmuch as the plaintiff could not recover the property without clearing out of his way the order of attachment, which he could only do by establishing his right in the sense of s. 283, and therefore the suit was not one cognizable in a Court of Small Causes. *Janaki Ammal v. Vithenaden* (5 Mad. H. C. R. 191), *Kundeme Naine Booche Naidoo v. Rayoo Lutcheemepaty Naidoo* (8 Mad. H. C. R. 33), *Gordhan Pema v. Kasandas Balmukundas* (I. L. R., 3 Bom. 179), *Chhaganlal Nagardas v. Jeshan Rav Dalsukhrām* (I. L. R., 4 Bom. 503), *Balkrishna v. Kisansing* (I. L. R., 4 Bom. 505), and *Radha Kishen v. Chotey Lal* (N. W. P. H. C. R. 1871, p. 155), dissented from.—*Godha v. Naik Ram*, I. L. R., 7 All. 152. [Aug. 7, 1883.]

THE consideration for a mortgage consisted partly of the amount of two decrees held by the mortgagee against the mortgagor. The mortgagee having sued to enforce the mortgage, the mortgagor pleaded failure of consideration as a bar to the enforcement of the mortgage. This plea was based on the allegation that the mortgagee had not certified the adjustment of the decrees as provided by s. 258 of the Civil Procedure Code, and they were still in force under the terms of that section. *Per* Duthoit, J., that the failure of the mortgagee to certify the adjustment of the decrees did not constitute a failure of consideration, because he did not covenant to certify such adjustment, and it was not, in fact, necessary for him to do so; because he could not seek execution of the decrees on the ground that, though unsatisfied, they were still in force under s. 258 of the Civil Procedure Code, without becoming liable to penalties; and because, if the mortgagor considered the entering up of the adjustment of the decrees to be imperative, he had his remedy by application to the Court in the terms of s. 258. *Per* Mahmood, J., that the adjustment of a decree out of Court, if never certified to the Court, is, under s. 258, ineffectual only so far as the execution of the decree is concerned; that there is nothing in the Contract Act to make such an adjustment invalid as the consideration for an agreement; that an agreement founded on such consideration may be enforced without defeating the objects of s. 258; and that consequently there was, in respect of the amount of the decrees, valid consideration for the mortgage. *Gunamani Dasi v. Pran Kishori Dasi* (5 B. L. R. 223; 13 W. R. 69), *Meer Mahomed Kazem Jowharry v. Khetoo Bibee* (20 W. R. 150), *Guni Khan v. Koonjo Behary Sein* (3 C. L. R. 414), *Davlat v. Ganesh Shashtri* (I. L. R., 4 Bom. 295), *Shadi v. Ganga Sahai* (I. L. R., 3 All. 538), and *Sita Ram v. Mahipal* (I. L. R., 3 All. 533), followed. *Patankar v. Devji* (I. L. R., 6 Bom. 146) and *Pundrang Ramchandra Chowghule v. Narayan* (I. L. R., 8 Bom. 300), dissented from.—*Ramghulam v. Janki Rai*, I. L. R., 7 All. 124. [Aug. 15, 1884.]

WHEN a party prefers a claim or makes any objection to the attachment of any property in execution of a decree, but fails to establish it, and brings a suit under s. 283 of the Code of Civil Procedure (Act XIV. of 1882) to establish his right to the property attached, his plaint is to be treated as falling under art. 17, cl. 1, of sch. 2

of the Court Fees Act (VII. of 1870), and is chargeable with only a ten-rupee stamp, notwithstanding that the plaintiff may pray in such a suit to be awarded possession.—*Dhondo Sakharam Kulkarni v. Govind Babaji Kulkarni*, I. L. R., 9 Bom. 20. [Aug. 19, 1884.]

Held that persons other than the decree-holders, or the persons whose property was sold in execution of decree, were not competent to apply to the Court under s. 311 of the Civil Procedure Code to set aside the sale. *M.* in whose name property had been purchased at an execution sale which was improperly set aside, brought a suit to have the order setting aside the sale reversed, and the sale confirmed in her favour, and for a declaration that the property was not liable to be sold in execution of a decree of the defendants against third persons, under which it had been attached and advertised for sale. **Held** that such a suit could only be maintained under s. 42 of the Specific Relief Act (I. of 1877), but that s. 244 of the Civil Procedure Code indicated the intention of the Legislature that such questions should be determined in the execution department, and, reading together the provisions of ss. 244, 278, and 283 of the Code, the suit was premature, and therefore not maintainable.—*Man Kuar v. Tara Singh*, I. L. R., 7 All. 583. [Mar. 23, 1885.]

IN certain execution-proceedings land was attached, but before the sale the judgment-debtors, with the permission of the Court, sold the land to the plaintiffs. Previous to this sale, certain persons had come forward in the execution-proceedings, and had claimed the land as having been sold to them by the father of the judgment-debtors; this claim was disallowed in November 1876. In 1881 the plaintiffs, alleging that they had been dispossessed by certain persons, amongst whom were the claimants in the execution-proceedings, brought a suit to recover possession of this land against these persons. This suit was decided against the plaintiffs in the lower Appellate Court, on the ground that they had failed to prove that they had been in possession of the land 12 years before suit. On appeal to the High Court the plaintiffs, appellants, contended that the claim of the defendants in the execution-proceedings having been rejected, and they not having brought a regular suit within one year from the order of rejection to establish their right to possession, the defendants were prevented by that order from contending that the plaintiffs had not been in possession at the time of that order. **Held** that the order did not operate as an estoppel against the defendants; and even if it could so operate, it would not do so until the time had run out, within which they could have brought a suit to establish their right to possession, and that such time had not expired.—*Gend Lal Tewari v. Denonath Ram Tewari*, I. L. R., 11 Cal. 673. [June 11, 1885.]

THE order contemplated by s. 281 of the Code of Civil Procedure is an order made after investigation into the facts of the case, and it is only when the order is made after such investigation that the limitation of one year is applicable to a subsequent suit under s. 283 of the Civil Procedure Code.—*Chandra Bhusan Gangopadhyaya v. Ram Kanth Banerji*, I. L. R., 12 Cal. 108. [July 1, 1885.]

A OBTAINED a money-decree against B, and, in execution, attached property in the possession of C, who claimed to have purchased it for value from B previously to the date of the decree. The attachment was removed on the motion of C. A then brought a suit against C, under s. 283 of the Code of Civil Procedure (Act XIV. of 1882), to have it declared that the property was liable to attachment and sale under the decree. C contended that the decree sought to be executed was a collusive one. **Held** that C could not be allowed to impeach the decree between A and B.—*Gulibai v. Jagannath Galvanhar*, I. L. R., 10 Bom. 659. [July 6, 1885.]

CERTAIN moveable property having been attached, in execution of a Small Cause decree passed by the Court of a Subordinate Judge, a claim thereto was preferred by M, and rejected. M then brought a suit in the District Munsif's Court for a declaration that the property was his, and was not liable to be sold in execution. The suit was dismissed on the ground that it was cognizable by a Court of Small Cause. **Held** that M was not bound to sue for recovery of the property, and that the suit was not cognizable by a Small Cause Court constituted under Act XI. of 1865.—*Mahomed Koya v. Kasmi*, I. L. R., 9 Mad. 206. [Nov. 2, 1885.]

SUITS under s. 283 of the Code, although they are brought for the purpose of establishing rights which have been negatived in execution-proceedings, are neither described in the Code, nor are dealt with in practice, as appeals from the orders of lower Courts; they are substantive suits to all intents and purposes, and must be tried like any other suits subject to the ordinary rules of procedure and evidence. There is nothing in the provisions of ss. 278 to 283 of the Code limiting in a suit under s. 283 a plaintiff's right to compensation for his loss, or the defendant's responsibility for his wrongful act; and if the existence of the summary procedure (in ss. 278 to 282) leads to delay, and that delay to further loss, the consequences must fall upon the defendant.—*Kishori Mohun Bai v. Hurrook Dass*, I. L. R., 12 Cal. 696. [Mar. 13, 1886.]

A JUDGMENT-CREDITOR of the plaintiff, having obtained a decree against the plaintiff, attached the house in dispute. The defendant intervened in 1878, and set up a previous purchase of the house by himself from the plaintiff. The attachment was removed. The judgment-creditor brought a suit against the defendant for declaration that the property belonged to the plaintiff, and, as such, was liable to be attached and sold in execution. At the hearing of this suit the judgment-creditor did not appear. The defendant appeared, and produced a sale-deed, which the Court found proved, and dismissed the judgment-creditor's suit. The plaintiff now brought the present suit against the defendant to recover possession of the house. The defendant contended (*inter alia*) that the dismissal of the former suit, brought by the plaintiff's judgment-creditor, operated as *res judicata* under s. 13 of the Civil Procedure Code (Act XIV. of 1882). Both the lower Courts disallowed the defendant's contention, holding that the suit was not barred. On appeal by the defendant to the High Court, *held*, confirming the lower Courts' decree, that the dismissal of the former suit did not operate as *res judicata* in the absence of any evidence to show that the judgment-creditor, in point of fact, represented the plaintiff so as to constitute him a party to the suit. It was contended for the defendant that the plaintiff, as the judgment-debtor, might, at any rate, be regarded as a party, against whom the order in the execution-proceedings in 1878 was made, and that the present suit was, therefore, barred by limitation. *Held* that the plaintiff could not be regarded as a party to those proceedings. Whether a judgment-debtor is to be regarded as a party to an investigation under s. 278 of the Code, must depend upon the facts of each case. As the question of limitation was raised for the first time in second appeal, it could not be decided against the plaintiff.—*Shivápa v. Dod Nágaya*, I. L. R., 11 Bom. 114. [Sep. 14, 1886.]

284. Any Court may order that any property which has been attached

Power to order property attached to be sold and proceeds to be paid to person entitled.

ed, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the

Extending to Provincial S. C. Courts (so far as relates to moveable property).

decree to receive the same.

ALTHOUGH there is no express provision in the Code laying down that a decree-holder may take out of Court the proceeds of an execution-sale before the date on which the sale is confirmed, yet s. 315 of the Code implies that this may be done. The Court, however, under special circumstances, may refuse to pay over to the decree-holder the purchase-money until the sale is confirmed, but in such case it should provide for due payment of interest on the money detained. *Held* that, under the special circumstances of this case, the decree-holder was not entitled to receive interest from his judgment-debtor from the date of the sale to the date on which the sale was confirmed.—*Jogendro Nath Sircar v. Gobind Chunder Addi*, I. L. R., 12 Cal. 252. [July 11, 1885.]

WHEN a property is sold in execution of a decree, it cannot be sold again at the instance of another decree-holder, who may have attached it before the attachment effected by the decree-holder under whose decree it is actually sold; and when a judicial sale takes place, all previous attachments effected upon the property sold fall to the ground.—*Kashy Nath Roy Chowdhry v. Surbanand Shaha*, I. L. R., 12 Cal. 317. [Sep. 2, 1885.]

285. Where property not in the custody of any Court has been attached

Property attached in execution of decrees of several Courts.

in execution of decrees of more Courts than one, the Court which shall receive or realize such property, and shall determine any claim thereto, and any objection to the attachment thereof, shall be the Court of highest grade, or where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

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CERTAIN immoveable property was attached in execution of a decree made by a Subordinate Judge, and also in execution of a decree made by a Munsif. These decrees were held by the same person, and the judgment-debtor was the same person. Such property was sold in execution of both decrees. On the application of the judgment-debtor, who brought into Court the amount due on the decree made by the Subordinate Judge, and with the consent of the decree-holder and the auction-purchaser, the Subordinate Judge made an illegal order setting aside such sale. Subsequently, on the application of the decree-holder and the auction-purchaser, the Munsif made an order confirming such sale.

Per Spankie, J.—That the Subordinate Judge had not any jurisdiction under s. 285 of the Civil Procedure Code to deal with such sale as regards the decree made by the Munsif, and the Munsif was not precluded by that section from confirming such sale as regards the decree made by him by reason that the Subordinate Judge, a Court of a higher grade, had made an order setting it aside. *Per Oldfield, J.*—That having regard to the provisions of that section, it was doubtful whether the Munsif was competent to confirm such sale; but, inasmuch as the Subordinate Judge only intended to set it aside as regards the decree made by him, and his order was illegal, and the Munsif's order had done substantial justice, there was no reason to interfere.—*Chunni Lal v. Debi Prasad, I. L. R., 3 All. 358. [Dec. 20, 1880.]*

A, who had obtained a decree in the Court of the Second Munsif of B in September 1877, attached certain property within the jurisdiction which had been assigned to the Munsif by the District Judge under s. 18 of Act VI. of 1871. In the previous month, C, who had obtained a decree in the Court of the Additional Munsif of B (to whom jurisdiction had similarly been assigned), had attached the same property. The sale in execution of A's decree took place first, and A became the purchaser. A then objected in the Court of the Additional Munsif that the property could not again be sold; but his objection was overruled, and two days subsequently the property was again put up for sale in execution of C's decree, and he became the purchaser. A brought various suits against the tenants for arrears of rent, in which he succeeded. *Held* that the jurisdictions of the Munsifs were confined to the particular limits assigned to them, and that, as the property was situate within the limits assigned to the second Munsif, the Additional Munsif had no jurisdiction to attach or sell it, and that the attachment by C was made improperly and without jurisdiction. *Quære*.—Whether s. 285 of the Civil Procedure Code applies to immoveable property?—*Obhoy Churn Coondoo v. Golam Ali, I. L. R., 7 Cal. 410. [May 12, 1881.]*

WHERE property attached in execution of a decree of a Munsif's Court is, or becomes, subject to an attachment issued from a Subordinate Judge's Court, the holder of the decree in the Munsif's Court, in order to share rateably in the assets under s. 295 of the Code of Civil Procedure, must apply to the District Court to transfer his application to the subordinate Court. *Gopegnath Acharje v. Achha Bibhee (I. L. R., 7 Cal. 553) and Jetha Madnavji v. Najeralli Abhiramji (I. L. R., 4 Bom. 472) approved.—Muttalagiri v. Muttayyar, I. L. R., 6 Mad. 357. [April 26, 1883.]*

WHERE certain immoveable property which had been attached in execution of two decrees, one made by a Munsif, and the other by the District Court to which such Munsif was subordinate, was sold under the order of the Munsif, *held* (following in the Matter of the Petition of Badri Prasad: *Badri Prasad v. Saran Lal (I. L. R., 4 All. 359)* that the sale was bad by reason of the Munsif's want of jurisdiction to order it.—*Aghore Nath v. Shama Sundari, I. L. R., 5 All. 615. [June 25, 1883.]*

The provisions of s. 285 of the Code of Civil Procedure, 1882, apply to immoveable property. Where a house, while under an attachment issued by a Subordinate Judge's Court in execution of a decree, was sold in execution of another decree against the same judgment-debtor by the District Munsif's Court, and was then sold by the Subordinate Judge's Court, *held* that the sale by the District Munsif's Court was invalid by reason of the provisions of s. 285 of the Code of Civil Procedure, 1882.—*Muttukaruppan v. Mutturamlinga, I. L. R., 7 Mad. 47. [Aug. 11, 1883.]*

THE first mortgagee of certain immoveable property obtained a decree for the sale of the property, caused the property to be attached, and then ceased to prosecute the execution-proceedings. The second mortgagee then obtained a decree for the sale of the property, caused it to be attached and put up for sale, and purchased it himself. The first mortgagee then applied for the sale of the property, and the property was put up for sale, and was purchased by him. After the order for this sale was made, and before it took place, the judgment-debtor died, and the sale took place without his legal representatives being made parties to the execution-proceedings. The Courts which executed these decrees were of two different grades, the Court which executed the first mortgagee's decree being of the lower grade. In a suit by the first mortgagee against the second mortgagee for possession of the property, *held* that the sale to the first mortgagee was not invalid, with reference to the provisions of s. 285 of the Civil Procedure Code, because it had not been ordered and held by the Court of the higher grade, inasmuch as when such sale was ordered by the Court of the lower grade, the property was not under attachment in execution of the decree of the Court of the higher grade, that decree having been executed by the sale of the property, and therefore the provisions of that section were not applicable. *Badri Prasad v. Saran Lal (I. L. R., 4 All. 359) distinguished. Per Oldfield, J., that there was nothing in the provisions of s. 285 or s. 295 of the Civil Procedure Code to*

support the contention that the first mortgagee, after allowing the property to be sold, was debarred from enforcing execution of his decree against it, and was only entitled to look to the assets realized at the sale for the satisfaction of his decree. *Per* Oldfield, J.; that the sale to the first mortgagee was not void because the judgment-debtor had died before it took place, and it took place without his legal representatives being made parties to the execution-proceedings, inasmuch as the provisions of s. 368 of the Civil Procedure Code were not applicable to the case of the death of a judgment-debtor, and there was nothing in s. 234, even if that section is applicable to a case where the judgment-debtor dies while execution is proceeding and after sale of his property has been ordered, to imply that the sale is absolutely void, if no legal representative has been brought on the record. *Dulari v. Mohun Singh* (I. L. R., 3 All. 759) and *Gulabdas v. Lakshman Narhar* (I. L. R., 3 Bom. 221) referred to. *Per* Straight, J., that there was no legal obligation on the first mortgagee to resort to the procedure of s. 234 of the Civil Procedure Code, since the sale to the second mortgagee had passed to him the rights and interests of the judgment-debtor, and the legal representatives of the judgment-debtor had none of his property in their hands, and there is no provision in the Code of Civil Procedure which required the first mortgagee to make the second mortgagee a party to the proceedings in execution of the former's decree, and the latter could not have successfully objected to the sale in execution of that decree, and therefore that sale was not voided by the death of the judgment-debtor antecedent to its taking place. — *Stowell (C. W.) v. Ajudhia Nath*, I. L. R., 6 All. 255. [Mar. 17, 1884.]

AT an execution-sale held by an inferior Court at the instance of the decree-holder (the Court itself, the decree-holder, and the auction-purchaser being unaware of any objection to the exercise of a jurisdiction which the Court would ordinarily be competent to exercise), A purchased certain property, and this sale was confirmed. It appeared subsequently that this same property had, two years previous to the sale, been attached by a superior Court. On a sale of this property being ordered by the superior Court, A objected on the ground that he had already purchased the property. His objection was overruled, and a sale was held by the superior Court, at which A again became the purchaser. A then brought a suit against the decree-holder and the judgment-debtor in the inferior Court to recover as damages the sum paid by him at the sale. The suit was dismissed. *Held* that, although the superior Court had been wrong in insisting on the second sale, and in not requiring the amount received by the inferior Court to have been deposited in the superior Court, and then rateably distributed amongst the creditors of the judgment-debtors, yet the sale by the inferior Court was a good and valid sale; and A's suit was therefore rightly dismissed. *Obhoy Churn Coondoo v. Golam Ali* (I. L. R., 7 Cal. 410) adopted. — *Bykant Nath Shaha v. Rajendro Narain Rai*, I. L. R., 12 Cal. 333. [Sep. 10, 1886.]

G.—Of Sale and Delivery of Property.

(a) General Rules.

286. Sales in execution of decrees shall be conducted by an officer of

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Sales by whom conducted, the Court or by any other person whom the Court and how made. may appoint, and, except as provided in section 296, shall be made by public auction in manner hereinafter mentioned.

A CIVIL Court, having power to issue execution on a decree, is competent, notwithstanding the absence of special provision in the Code, to refuse to confirm a sale in favour of a purchaser, who has, by the exercise of fraud and collusion with the execution-creditor, succeeded in being declared such purchaser at a depreciated value, although such sale may be without any material irregularity within the meaning of the Code. An order confirming a Court-sale is not appealable under the Code. — *Subhu Rau v. Strinivasa Rau*, 4 Ind. Jur. 505.

WHERE a judgment-debtor died after his land had been attached, and the creditor brought the land to sale without making the representatives of the deceased parties to the proceedings, *held* that the sale was illegal, and must be set aside. — *Ramasami Ayyangar v. Bagirathi Ammal*, I. L. R., 6 Mad. 180. [Jan. 19, 1883.]

287. When any property is ordered to be sold by public auction in ex-

Ditto.

Proclamation of sales by execution of a decree, the Court shall cause a public auction. proclamation of the intended sale to be made in the language of such Court. Such proclamation shall state the time and place of sale, and shall specify as fairly and accurately as possible—

(a) the property to be sold ;

(b) the revenue assessed upon the estate or part of the estate, when the property to be sold is an interest in an estate or a part of an estate paying revenue to Government ;

(c) any incumbrance to which the property is liable ;

(d) the amount for the recovery of which the sale is ordered ; and

(e) every other thing which the Court considers material for the purchaser to know in order to judge of the nature and value of the property.

For the purpose of ascertaining the matters so to be specified, the Court may summon any person whom it thinks necessary, and examine him in respect to any such matters, and require him to produce any document in his possession or power relating thereto.

The High Court shall, as soon as may be after this Code comes into force, make rules for the guidance of the Courts in exercise of their duties under this section. The High Court may, from time to time, alter any rules so made. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law. As regards his own Court and the Court of Small Causes at Rangoon, the Recorder of Rangoon shall be deemed to be a "High Court" within the meaning of this paragraph.

Nothing in this section shall apply to cases in which the execution of the decree has been transferred to the Collector.

WHERE a sale in execution of a decree is postponed, whether indefinitely or to a fixed date, it is necessary, in the absence of an express arrangement between all the parties, that a fresh proclamation should be made giving notice of the day to which the sale has been postponed. It may be presumed, when the notice is wanting, that there has been an absence of bidders, from which alone substantial injury must probably have arisen to the judgment-debtor. *Shih Prokash Singh v. Sardar Doyal Singh* (I. L. R., 3 Cal. 544) and *Okhoy Chunder Dutt v. Erskine* (3 W. R., Mis. 11) followed.—*Gopee Nath Dobey v. Roy Luchmeeput Singh Bahadur*, I. L. R., 3 Cal. 512. [Dec. 21, 1877.]

WHEN on an execution-sale there is a discrepancy between the conditions in the notification of what is to be sold and the certificate of what has been sold, the conditions in the notification are to be taken as of superior authority in dealing with the conflicting claims of innocent third parties, whose rights are affected by the variation. In execution of a decree for arrears of rent, an application was made for a sale of the tenure for the arrears of which the decree had been obtained. A notification was issued, purporting to be a sale-proclamation, under Act VIII. of 1859, s. 249, and in pursuance of that notification the sale of the right, title, and interest of the judgment-debtor took place. *Held* that the tenure did not pass by that sale, notwithstanding that the sale-certificate stated it was the tenure itself which had been sold.—*Uma Churn Sen v. Gobind Chunder Mozumdar*, 1 C. L. R. 460. [Jan. 18, 1878.]

A DECREE-HOLDER, by a prohibitory order issued under Act X. of 1877, s. 268, attached a debt due to his judgment-debtor. This person, served with the order, applied, under s. 278, to have the attachment removed. *Held* that the application could not be entertained under s. 278, that section having no application to the case ; but that, before issuing a proclamation of sale, in execution of a decree, of the debt so attached, it is the duty of the Court, under s. 287, to ascertain all that the Court considers it material for the intending purchaser to know in order to judge of the nature and value of the property proclaimed for sale. If the property of which sale is sought is a debt, and the Court receives notice from the alleged debtor that no debt exists, the Court should satisfy itself as to the existence, or otherwise, of the debt, and, if it comes to the conclusion that no debt exists, should abstain from proceeding to sale.—*Harilal Amthabhai v. Abhesang Meru*, I. L. R., 4 Bom. 323. [Jan. 6, 1880.]

CERTAIN immoveable property was put up for sale, under the provisions of Act X. of 1877, in execution of a decree for money, and was purchased by C, with notice that L held a decree enforcing a lien on such property. Subsequently L applied for the sale of such property in execution of his decree, and such property was put up for sale in execution of that decree, and was purchased by S. S. sued, by virtue of such purchase, to recover possession of such property from C. *Held* that, inasmuch as under Act X. of 1877 what is sold in execution of a decree purports to be the specific property, and as C had purchased the

property in suit with notice of the existing lien on it, and subject to its re-sale in execution of the decree in execution of which S had purchased it, what actually was sold in execution of that decree to S was such property, and S was entitled to possession of such property under such sale. Sales under Act VIII. of 1859 and Act X. of 1877 distinguished.—*Sheo Ratan Lal v. Chotey Lal*, I. L. R., 3 Atl. 647: [Mar. 26, 1881.]

UPON an application to set aside a sale in execution of a decree on the ground of material irregularities in publishing and conducting it, it appeared that the sale-notification had not been fixed up in the Collector's office as required by s. 289 of Act X. of 1877; that no affidavit as to search having been made in the Registry Office with regard to incumbrances as required by s. 287 of the Act had been filed; and that the sale took place on, and not after, the thirtieth day from the publication of the notice; but it also appeared that the applicant had himself been present at the sale and had purchased the property, and it was not shown that any substantial injury had resulted from the irregularities. *Held* that there was no ground for setting aside the sale.—*Bandy Ali v. Madhub Chandra Nag*, I. L. R., 8 Cal. 932. [April 24, 1882.]

A CREDITOR obtained two decrees against his debtor, one being a mortgage-decree to enforce his lien on certain property, and in other a simple money-decree. In execution of the second decree the property over which the judgment-creditor had a lien was sold, and was purchased by a third person. Subsequently, execution of the first decree, at the instance of the judgment-creditor, this same property was advertized for sale, but on the auction-purchaser objecting, the judgment-creditor brought a suit against him to enforce his lien on the property in the hands of the auction-purchaser. *Held* that it lay on the plaintiff, in order to entitle him to recover in the suit, to show that the defendants purchased with notice of the lien. *Held* further that the fact that for some purpose at some time or other the judgment-creditor informed the Court of the mortgage is not evidence of notice on the auction-purchaser.—*Nursing Narain Singh v. Koghoobur Singh*, I. L. R., 10 Cal. 609. [April 24, 1884.]

IN the execution of a decree ordering the sale of immoveable property it is not competent for the Court to refuse to sell it, because a stranger to the suit in which such decree was obtained, who is in possession of such property, impeaches the decree as having been obtained by fraud; the course open to him, if he wishes stay of execution, being to file a suit and obtain an injunction for that purpose.—*Purshottam v. Purshottam*, I. L. R., 8 Bom. 532. [June 19, 1884.]

THE proclamation of sale required by s. 274 of the Civil Procedure Code to be made at some place adjacent to the property to be sold, and the fixing up of a copy of the order in a conspicuous part of the property, are acts which must precede the posting of the notices in the Court-house as required by s. 290. Where the sale-proceeds of a portion of several parcels of property are sufficient to satisfy the decree of a judgment-creditor who has attached the property, another judgment-creditor, although he has not attached the property, is still entitled to have the remainder of the property sold to satisfy his decree under the provisions of s. 295 of the Civil Procedure Code. Three mauzas were attached in execution of decrees obtained by A and B. Prior to the sale, C, who had also obtained a decree against the owner of the land, applied for leave to execute his decree, in order that he might participate in the sale-proceeds under s. 295 of the Civil Procedure Code. Upon the day fixed for the sale, the Deputy Commissioner was unable, through illness, to attend; and he postponed the sale for three days. Two of the mauzas were sold, and realized more than enough to satisfy the decrees of A and B. The third was then sold in satisfaction of C's decree. Upon an application by the judgment-debtor to set aside the sale on the ground of irregularity, it appeared that notice of the sale had been posted in the Court-house more than thirty days before the date fixed for the sale, but had only been published on the properties to be sold five days before the date; that notice of the existence of a mortgage on the properties, but no further particulars, was given, and the mortgagees were allowed to purchase, and that the Deputy Commissioner had accepted the reports of the Nazir and Court-peon as to the proclamation of sale, and had refused to allow the judgment-debtor to give evidence of its insufficiency. *Held* that the proclamation of sale on the property having taken place only five days prior to the date of sale, and the particulars of the mortgage not having been given, there had been such material irregularities in the publication as to entitle the judgment-debtor to give evidence of them and the other allegations made by him, in order to show that he had suffered material injury by reason of such irregularities. *Held* also that the Deputy Commissioner was not entitled to proceed upon the reports of the Nazir and Court-peon, but was bound to hear the evidence tendered by the judgment-debtor, though he was justified, under s. 291, in postponing the sale as he had done. *Held*, further, that the third judgment-creditor, who had not attached the

property, was still entitled to have the sale proceeded with, and his decree satisfied under the provisions of s. 295.—*Mohunt Megh Lall Pooree v. Shib Pershad Madi*, I. L. R., 7 Cal. 24. [Mar. 18, 1888.]

Extending to
Provincial S.
C. Courts.

288. No Judge or other public officer shall be answerable for any error, misstatement, or omission in any proclamation under section 287, unless the same has been committed or made dishonestly.

Vitto.

289. The proclamation shall be made, in manner prescribed by section 274, on the spot where the property is attached, and a copy thereof shall then be fixed up in the Court-house and, in the case of land paying revenue to Government, also in the Collector's office.

If the Court so direct, such proclamation shall also be published in the local official Gazette and in some local newspaper, and the costs of such publication shall be deemed to be costs of the sale.

THE proclamation of sale required by s. 274 of the Civil Procedure Code to be made at some place adjacent to the property to be sold, and the fixing up of a copy of the order in a conspicuous part of the property, are acts which must precede the posting of the notices in the Court-house as required by s. 290. Where the sale-proceeds of a portion of several parcels of property are sufficient to satisfy the decree of a judgment-creditor who has attached the property, another judgment-creditor, although he has not attached the property, is still entitled to have the remainder of the property sold to satisfy his decree under the provisions of s. 295 of the Civil Procedure Code. Three mauzas were attached in execution of decrees obtained by A and B. Prior to the sale, C, who had also obtained a decree against the owner of the land, applied for leave to execute his decree, in order that he might participate in the sale-proceeds under s. 295 of the Civil Procedure Code. Upon the day fixed for the sale, the Deputy Commissioner was unable, through illness, to attend; and he postponed the sale for three days. Two of the mauzas were sold, and realized more than enough to satisfy the decrees of A and B. The third was then sold in satisfaction of C's decree. Upon an application by the judgment-debtor to set aside the sale on the ground of irregularity, it appeared that notice of the sale had been posted in the Court-house more than thirty days before the date fixed for the sale, but had only been published on the properties to be sold five days before that date; that notice of the existence of a mortgage on the properties, but no further particulars, was given, and the mortgagee was allowed to purchase; and that the Deputy Commissioner had accepted the reports of the Nazir and the Court-peon as to the proclamation of sale, and had refused to allow the judgment-debtor to give evidence of its insufficiency. *Held* that the proclamation of sale on the property having taken place only five days prior to the date of sale, and the particulars of the mortgage not having been given, there had been such material irregularities in the publication as to entitle the judgment-debtor to give evidence of them and the other allegations made by him, in order to show that he had suffered material injury by reason of such irregularities. *Held* also that the Deputy Commissioner was not entitled to proceed upon the reports of the Nazir and Court-peon, but was bound to hear the evidence tendered by the judgment-debtor, though he was justified, under s. 291, in postponing the sale as he had done. *Held*, further, that the third judgment-creditor, who had not attached the property, was still entitled to have the sale proceeded with, and his decree satisfied under the provisions of s. 295.—*Mohunt Megh Lall Pooree v. Shib Pershad Madi*, I. L. R., 7 Cal. 34. [Mar. 18, 1881.]

UNDER ss. 289 and 274 of the Civil Procedure Code, it is necessary that a copy of the sale-proclamation should be affixed to some conspicuous place on the property attached; and the omission to do so is a material irregularity within the meaning of s. 311 of the Code of Civil Procedure. If it is proved that the price obtained for property sold at an execution-sale is greatly inadequate, and if it be also proved that there has been a material irregularity in publishing or conducting the sale, the Court will presume that the irregularity was the cause of the inadequacy of price, until proof is given to the contrary.—*Kalyata Chowdharin v. Ramcoomar Goopla*, I. L. R., 7 Cal. 466. [May 25, 1881.]

HELD that the fact of a sale of immovable property in execution of a decree having taken place before thirty days from the proclamation of sale being made on the property had expired was not a material irregularity in the publication of the sale. *Mohunt Megh Lall Pooree v. Shib Pershad Madi* (I. L. R., 7 Cal. 34) dissented from.—*Rabchandar Bahadur v. Kamta Prasad*, I. L. R., 4 All. 300. [Feb. 27, 1882.]

UPON an application to set aside a sale in execution of a decree on the ground of material irregularities in publishing and conducting it, it appeared that the sale-notification had not been fixed up in the Collector's office as required by s. 289 of Act X. of 1877; that no affidavit as to search having been made in the Registry Office with regard to incumbrances as required by s. 287 of the Act had been filed; and that the sale took place on, and not after, the thirtieth day from the publication of the notice; but it also appeared that the applicant had himself been present at the sale and had purchased the property, and it was not shown that any substantial injury had resulted from the irregularities. *Held* that there was no ground for setting aside the sale.—*Bandy Ali v. Madhub Chunder Nag and others*, I. L. R., 8 Cal. 932. [April 24, 1882.]

THE words "on the spot where the property is attached" in s. 289 of the Civil Procedure Code refer to each property attached, and not to a group of separate properties attached under one proceeding or order in one execution-case, and therefore when distinct properties are proclaimed for sale in one execution the omission to affix a copy of the proclamation in each of such properties amounts to an irregularity in the publication of the sale. *Held* also that where there is no evidence to connect the two elements of irregularity and injury under s. 289, it must appear, before a Court can set aside an execution sale, that the injury complained of is the reasonable and natural consequence of the irregularity, and attributable to it alone.—*Tripura Sundari v. Durga Churn Pal*, I. L. R., 11 Cal. 74. [Sep. 13, 1884.]

OMISSION to have a drum beaten as required by ss. 274 and 289 of the Civil Procedure Code (Act XIV. of 1882) *held* to be a material irregularity so as to render a sale held in execution of a decree liable to be set aside.—*Trimbak Rāvji v. Nānā*, I. L. R., 10 Bom. 504. [Jan. 25, 1886.]

290. Except in the case of property mentioned in the proviso to section 269, no sale under this chapter shall, without the consent in writing of the judgment-debtor, take

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place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been fixed up in the Court-house of the Judge ordering the sale.

AN application made on the day of sale by the judgment-debtor, that a part only of his property may be sold instead of the entirety, cannot be considered such a "consent" as, by virtue of s. 290 of Act X. of 1877, would do away with the necessity of a proclamation for sale being issued thirty days before the day fixed for sale. Where successive postponements of the day of sale have been made, but the last of these is made by the Court on its own motion, without any application for postponement of sale being made on the part of the judgment-debtor (although such postponement might be for his benefit), a strict compliance with the rule that thirty days must elapse between the proclamation and the actual day of sale is requisite. *Ray Gauri Nath Sahay v. Shah Fukeer Chand* (18 W. R. 347) distinguished. Where a decree for sale of certain property was obtained under Act VIII. of 1859, and the property was sold, but an order was passed after the new Code of Procedure (Act X. of 1877) had come into force setting aside such sale. *Held* that an appeal would lie from such an order under Act X. of 1877. *Ranjit Singh v. Meherban Koer* (I. L. R., 3 Cal. 662) followed.—*Hurbans Sahai v. Bhairo Pershad Singh*, I. L. R., 5 Cal. 259. [Feb. 19, 1879.]

CERTAIN immoveable property was, on the 15th February 1879, notified for sale under a decree of a Civil Court on 15th March following, so that only 29, instead of 30, days elapsed between the day of the sale and the notification. The sale having taken place, the execution-debtor applied to the Deputy Commissioner to set it aside upon the ground that the sale was illegal, the requirements of Act X. of 1877, s. 290, being essential to its validity. Upon that ground the sale was set aside as illegal by the Deputy Commissioner. On appeal, the Judicial Commissioner reversed this decision, on the ground that the fact of the sale having taken place 29 instead of 30 days after the notification was merely an irregularity, and that, as the execution-debtor had not shown that he had suffered any damage from the irregularity, the sale ought to be confirmed. An application was then made to a Division Bench of the High Court to set aside the order of the Judicial Commissioner confirming the sale, upon the ground that it was manifestly erroneous; and the Division Bench referred the question to a Full Bench. Whether assuming the requirements of s. 290 to be essential to the validity of a sale, the High Court had any power either under 24 & 25 Vic., c. 105, s. 15, or Act X. of 1877, s. 622, as amended, to set aside the Judicial

Commissioner's order? *Held* by the Full Bench, without answering the question referred, that, assuming the requirements of s. 290 to be essential, the High Court had a right, under its summary powers, to set aside the sale itself, notwithstanding (and apart from the question whether it would set aside) the order of the Judicial Commissioner.—*In re Bhekraj Koeri*, I. L. R., 5 Cal. 878. [April 5, 1880.]

If, when property has been attached in execution of a decree, and prior to sale, an application is made for execution of another decree so that the second decree-holder may participate under s. 295 of the Civil Procedure Code in the assets realized, portion of the property attached be sold in the first instance, then, as both decrees are entitled to participate rateably, if the amount realized is not sufficient to satisfy both decrees, although sufficient to pay off the former, a further sale may be held. As to reports of the Nazir and the peons of the Court, see *Obhoy Churn Seck v. Erskine* (3 W. R. Misc. 11), *Sreenath Thakoor v. Watson* (4 W. R. Misc. 41), *Shibkoondan Lal v. Noor Ali* (10 W. R. 3). Under s. 290 it seems intended that the copy of the proclamation should not be "fixed up in the Court-house" until the proclamation itself has been made under s. 274 of the Civil Procedure Code. When properties put up for sale in execution of a decree are subject to any incumbrance, the proclamation ought to specify the amount of the debt outstanding. An omission to specify such amount affords strong *prima facie* ground, where a mortgagee in possession is himself the purchaser, for believing that an inadequate price has been obtained.—*Megh Lal Pooree Mohunt v. Mohammed Dutt Jha*, 8 C. L. R. 369. [Mar. 18, 1881.]

HELD that the fact of a sale of immoveable property in execution of a decree having taken place before thirty days from the proclamation of sale being made on the property had expired was not a material irregularity in the publication of the sale. *Mohunt Megh Lal Pooree v. Shib Pershad Madi* (I. L. R., 7 Cal. 31) dissented from.—*Rahchandrar Bahadur v. Kamta Prasad*, I. L. R., 4 All. 300. [Feb. 27, 1882.]

AN infringement of the rule contained in s. 290 of the Civil Procedure Code is an irregularity vitiating a sale in execution of decree, and is something more than a material irregularity in publishing a sale to which s. 311 refers.—*Bakhshi Nand Kishore v. Malak Chand*, I. L. R., 7 All. 289. [Jan. 23, 1885.]

Extending to
Provincial S.
C. Courts.

291. The Court may, in its discretion, adjourn any sale under this chapter (other than a sale by the Collector) to a specified day and hour, and the officer conducting any

Power to adjourn sale.

such sale may, in his discretion, adjourn the sale, recording his reasons for such adjournment: Provided that when the sale is made in, or within the precincts of, the Court-house, no such adjournment shall be made without the leave of the Court. Whenever a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall

be made, unless the judgment-debtor consents to waive it. Every such sale shall be stopped if, before the lot is knocked down, the debt and cost (including the costs of the sale) are tendered to such officer, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court that ordered the sale.

THE proclamation of sale required by s. 274 of the Civil Procedure Code to be made at some place adjacent to the property to be sold, and the fixing up of a copy of the order in a conspicuous part of the property, are acts which must precede the posting of the notices in the Court-house as required by s. 290. Where the sale-proceeds of a portion of several parcels of property are sufficient to satisfy the decree of a judgment-creditor who has attached the property, another judgment-creditor, although he has not attached the property, is still entitled to have the remainder of the property sold to satisfy his decree under the provisions of s. 295 of the Civil Procedure Code. Three mauzas were attached in execution of decrees obtained by A and B. Prior to the sale, C, who had also obtained a decree against the owner of the land, applied for leave to execute his decree in order that he might participate in the sale-proceeds under s. 295 of the Civil Procedure Code. Upon the day fixed for the sale, the Deputy Commissioner was unable, through illness, to attend; and he postponed the sale for three days. Two of the mauzas were sold, and realized more than enough to satisfy the decrees of A and B. The third was then sold in satisfaction of C's decree. Upon an application by the judgment-debtor to set aside the sale on the ground of irregularity, it appeared that notice of the sale had been posted in the Court-house more than thirty days before the date fixed for

the sale, but had only been published on the properties to be sold five days before the date; that notice of the existence of a mortgage on the properties, but no further particulars, was given, and the mortgagee was allowed to purchase; and that the Deputy Commissioner had accepted the reports of the Nazir and Court-peon as to the proclamation of sale, and had refused to allow the judgment-debtor to give evidence of its insufficiency. *Held* that the proclamation of sale on the property having taken place only five days prior to the date of sale, and the particulars of the mortgage not having been given, there had been such material irregularities in the publication as to entitle the judgment-debtor to give evidence of them and the other allegations made by him, in order to show that he had suffered material injury by reason of such irregularities. *Held* also that the Deputy Commissioner was not entitled to proceed upon the reports of the Nazir and Court-peon, but was bound to hear the evidence tendered by the judgment-debtor, though he was justified under s. 291 in postponing the sale as he had done. *Held*, further, that the third judgment-creditor, who had not attached the property, was still entitled to have the sale proceeded with, and his decree satisfied under the provisions of s. 295.—*Mohunt Mogh Lall Pooreo v. Shib Pershad Madi*, I. L. R., 7 Cal. 84. [Mar. 18, 1881.]

292. No officer having any duty to perform in connection with any sale under this chapter shall, either directly or indirectly, bid for, acquire, or attempt to acquire, any interest in any property sold at such sale. Extending to Provincial S. C. Courts.

Officers concerned in execution-sales not to bid for or buy property sold.

PLEADERS of parties to a suit are not debarred by s. 292 of the Code of Civil Procedure from purchasing property sold in execution of the decree.—*Alagirisami v. Ramasathan*, I. L. R., 10 Mad. 111. [Sep. 17, 1886.]

293. The deficiency of price (if any) which may happen on a re-sale under this Code by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court by the officer holding the sale, and shall, at the instance of either the judgment-creditor or the judgment-debtor, be recoverable from the defaulter under the rules contained in this chapter for the execution of a decree for money. Extending to Provincial S. C. Courts (so far as relates to re-sales under s. 297).

Defaulting purchaser answerable for loss by re-sale.

WHERE property has been sold under a decree, and the purchaser at the execution-sale has made default in paying the purchase-money, the remedy of the judgment-creditor is not limited by s. 254 of Act VIII. of 1859 to a suit against the defaulting purchaser. He is entitled to recover the balance of his debt from his judgment-debtor, who may, perhaps, have his remedy against the defaulting purchaser. *Jeebraji Singh v. Gaur Buxsh Lal* (7 Cal. W. R., Civ. Bul., 110) dissented from.—*Anandrávápuri v. Shekhabáá*, I. L. R., 2 Bom. 562. [April 8, 1878.]

WHERE portion of the property of a judgment-debtor has been sold in execution for a sum sufficient to satisfy the decree, the Court is not justified, on default being made by the purchaser, in directing the sale of any further portion of the debtor's property, it being open either to the judgment-creditor or the judgment-debtor to apply that the balance due upon the decree after re-sale of the portion already sold should be realized from the defaulter.—*Joy Chunder Biswas v. Kali Kishore Dey Sircar*, 8 C. L. R. 41. [Jan. 12, 1881.]

A PURCHASER of property at a Court-sale who fails to pay the deposit (25 per cent. on the purchase-money) directed to be paid by s. 306 of the Civil Procedure Code is a defaulting purchaser within the meaning of s. 293 of that Code, and liable, as such, to make good any deficiency of price which may happen on a re-sale, and all expenses attending the same. A sale in which a decree-holder himself, or some other person for him, without the permission of the Court first obtained, becomes the purchaser, is not, *ipso facto*, void: it is a good sale unless and until set aside by the Court under the provisions of s. 294 of the Civil Procedure Code.—*Javperbái v. Haribhai*, I. L. R., 5 Bom. 575. [April 4, 1881.]

THE provisions of s. 293, Act X. of 1877 (Civil Procedure Code), for making a defaulting purchaser at a sale liable for any deficiency on a re-sale, extend to all sales, whether of moveable or immoveable property, and also to re-sales held under ss. 297, 306, and 308.—*Ramdhani Sahai v. Rajrani Koor*, I. L. R., 7 Cal. 337. [April 22, 1881.]

At a sale in execution of a decree the property was knocked down to a bidder at Rs. 260. The bidder was unable to make a deposit, and the property was immediately put up for sale and re-sold for Rs. 50. *Held* that the judgment-debtor had sustained such substantial injury as would justify the Court in setting aside the sale, notwithstanding that the judgment-debtor might, under s. 293 of the Civil Procedure Code, have sued to recover the difference between the original bid and the price at which the property was sold.—*Beepen Chunder Shickdar v. Purushoth Biswas*, I. L. R., 9 Cal. 98. [June 29, 1882.]

Extending to
Provincial S.
C. Courts.

Decree-holder not to bid for or buy property without permission.

294. No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

When a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, if he so desires, be set-off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder.

THE holder of a decree, in execution of which property is sold, is absolutely bound under Act X. of 1877, s. 294, to have express permission from the Court before he can purchase the property; and whether this objection is taken and pressed or otherwise, a sale to him is invalid, unless he has got explicit permission. The use, at a sale, of language by an intending bidder in disparagement of the property for the purpose of influencing bystanders, and deterring them from bidding for the property, is a "material irregularity," sufficient to render the sale invalid, under s. 311 of the same Act.—*Rukhinee Bullubh v. Brojonath Sircar*, I. L. R., 5 Cal. 308. [April 1, 1879.]

A PURCHASE by the son of a decree-holder, undivided in interest from his father, is a purchase by the decree-holder within the meaning of s. 294 of Act X. of 1877 as it stood previously to its amendment by Act XII. of 1879, and is absolutely void, if the purchase were made with funds which were the joint property of the father and son. In the absence of evidence to the contrary, the legal presumption would be that the funds were joint property.—*Narayan Deshpande v. Anaji Deshpande*, I. L. R., 5 Bom. 130. [July 12, 1880.]

THE holder of a decree for unascertained mesne-profits, who has applied to the Court to ascertain the amount thereof, and to attach immoveable property under s. 255 of the Code of Civil Procedure, comes within the purview of s. 295, and is entitled to share rateably with the attaching creditor in the assets realized. S. 294 must be read with s. 295, and to give effect to both sections the receipt to be given by the decree-holder, who has obtained leave to bid from the Court, and has purchased the property sold, can only be accepted for so much of the judgment-debt as the assets applicable to its discharge may suffice to satisfy.—*Viraragava Ayyangar v. Varada Ayyangar*, I. L. R., 5 Mad. 123. [Feb. 16, 1882.]

WHERE there are competing decree-holders, who have applied for execution of their decrees, s. 294 of the Civil Procedure Code (Act X. of 1877) must be taken as subject to the provisions of s. 295, so that the decree-holder who has been permitted under the former section to purchase the property in execution of his own decree must share the proceeds of the sale rateably with such competing decree-holders, and will not be allowed to set-off the purchase-money against the amount due to him on his decree.—*Shrinivas v. Kadhábái*, I. L. R., 6 Bom. 570. [Mar. 30, 1882.]

A OBTAINED a money-decree against B and others jointly for Rs. 112, and, in consideration of a payment of Rs. 25 made by B, agreed to release B from all liability under the decree. This payment was not certified to the Court, and A afterwards, in execution of the decree, had certain immoveable property belonging to B put up for sale, and this

property he purchased himself. *Held* that a suit would lie by B to set aside the sale and to recover the property from A.—*Ishan Chunder Bandopadhyaya v. Indronarain Gossami*, I. L. R., 9 Cal. 788. [Feb. 26, 1883.]

A MORTGAGEE having obtained a decree, declaring his lien on certain property, put up for sale, in execution of this decree, the mortgaged property. The decree-holder asked for, but was refused, leave to bid at the sale, but, notwithstanding such refusal, purchased the property in the name of a third person. Possession under the sale was opposed, and the decree-holder as purchaser brought a suit for possession of the property. The defendants contended that inasmuch as the plaintiff (decree-holder) had been refused leave to bid at the sale, his purchase could not be enforced. *Held* that the plaintiff had been guilty of an abuse of the process of the Court in bidding at the sale and buying the property benami, and that the sale, therefore, ought not to be enforced.—*Mahomed Gaze Chowdhry v. Ram Loll Sen*, I. L. R., 10 Cal. 757. [May 16, 1884.]

IN 1879, D obtained a decree against S. S gave security for the satisfaction of the decree, whereupon D agreed not to take proceedings in execution. In breach of this agreement D in the same year applied for execution, and sold certain immoveable property, belonging to S, of which K became the purchaser. K did not apply for possession until 1883, in which year he applied for and obtained possession of the property. S alleged that he then for the first time became aware of the sale, and that by the fraud of D and K he had been kept in ignorance of the execution-proceedings taken by D in breach of the above-mentioned agreement, and within thirty days after K obtained possession, he (S) applied for a reversal of the orders which had been passed in the aforesaid fraudulent proceedings. The Subordinate Judge held that the application was barred by art. 166 of sch. 2 of the Limitation Act (XV. of 1877), and referred the applicant to a separate suit to set aside the sale. On application to the High Court, *held* that a separate suit would not lie, and that the relief sought by S could only be obtained, at all events as against D, by an application under s. 214 of the Civil Procedure Code (Act XIV. of 1882). *Held* also that art. 166 of sch. 2 of the Limitation Act (XV. of 1877) did not apply. That article, as amended by s. 108 of Act XII. of 1879, only applies to applications made under s. 311 or s. 294 of the Civil Procedure Code seeking to set aside a sale on the ground of a material irregularity in publishing or conducting the sale, or on the ground that the decree-holder has purchased without the permission of the Court.—*Sakharām Govind Kale v. Dāmodar Akhārām Gujar*, I. L. R., 9 Bom. 468. [April 29, 1885.]

UNDER the terms of s. 294 of the Civil Procedure Code, it is discretionary with the Court to set aside an execution-sale at which the decree-holder has bid and purchased without first obtaining permission from the Court so to do; and in dealing with such a case, the Courts, although considering the matter as an irregularity in the conduct of the sale, will not interfere with the sale, unless it can be shown that the judgment debtor has suffered some substantial injury arising from such irregularity.—*Mathura Das v. Nathuni Lall Mata*, I. L. R., 11 Cal. 731. [June 3, 1885.]

IN execution of a decree against M the plaintiff attached and advertized for sale certain property in mauza A. At that time there were pending proceedings in execution of two other decrees obtained against M by the first and second defendants respectively. These two decrees were obtained on a bond executed by M, by which an eight-anna share of mauza A was hypothecated as collateral security; and in execution of those decrees the defendants brought to sale, and themselves purchased, not an eight-anna share only, but the whole of mauza A, and were allowed by the Court to set-off the purchase-money against the amounts due to them under their decrees. At the same time the plaintiff's execution-case was struck off on 30th June 1880. In a suit brought by the plaintiff under s. 295 of the Civil Procedure Code for his share of the sale-proceeds of mauza A, in which the plaintiff alleged fraud on the part of the defendants in selling the whole mauza under their decrees, of which he only became aware in July 1882, from which time he dated his cause of action, the defendants denied the fraud, and contended that the suit should have been brought within a year of the order of the 30th June 1880; that a set-off having been allowed to the defendants, the plaintiff was not entitled to any rateable distribution; and that, if any rateable distribution were allowed, they were entitled to have an allowance made in respect of a mortgage which the plaintiff held in a two annas share of mauza A, which they had paid off subsequently to the transactions now in question. *Held* that the existence of the order of the 30th June 1880 was not inconsistent with the plaintiff's right, and the suit was therefore not barred as not having been brought within one year of that order. *Held* also that the fact of the set-off being allowed in exercise of the power given in s. 294 of the Code, instead of actual payment into Court, did not alter the substantial nature of the transaction, so as to render the purchase-money less applicable to the satisfaction of the debts of other attaching creditors. *Held*, further,

that the defendants were not entitled to deduct the sum paid by them to clear off the plaintiff's mortgage, from the amount of the purchase-money, before the Court could determine the amount rateably distributable among the parties concerned. *Quare*—Whether they were even entitled to reckon the amount so paid as one of the claims in respect of which, with others, a rateable distribution should be made?—*Taponidi Hordanund Bharati v. Mathura Lal Bhagat*, I. L. R., 12 Cal. 499. [Dec. 22, 1885.]

No appeal lies from an order passed under s. 294 of the Civil Procedure Code refusing permission to a decree-holder to bid at a sale in execution of his decree.—*Jodanath Munda v. Brojo Mohun Ghose*, I. L. R., 13 Cal. 174. [May 20, 1886.]

Extending to
Provincial S.
C. Courts.

295. Whenever assets are realized by sale otherwise in execution of a decree, and more persons than one have, prior to the realization, applied to the Court by which such assets are held for execution of decrees for money against the same judgment-debtor, and have not obtained satisfaction thereof, the assets, after deducting the costs of the realization, shall be divided rateably among all such persons :

Provided as follows :—

(a) when any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not as such be entitled to share in any surplus arising from such sale :

(b) when any property is liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the assent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same right against the proceeds of the sale as he had against the property sold :

(c) when immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale ;
secondly, in discharging the interest and principal-money due on the incumbrance ;
thirdly, in discharging the interest and principal-moneys due on subsequent incumbrances (if any) ; and
fourthly, rateably among the holders of decrees for money against the judgment-debtor, who have, prior to the sale of the said property, applied to the Court which made the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

If all or any of such assets be paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

Nothing in this section affects any right of the Government.

THE fact that a money-decree has been obtained on a bond by which property has been mortgaged does not destroy the lien on that property. It is open to a plaintiff to establish his right on the bond, as well as on the decree. The purport of ss. 270 and 271 of Act VIII. of 1859 (with which s. 295 of Act X. of 1877 corresponds) is not to alter or limit the rights of parties arising out of a contract, but simply to determine questions between rival decree-holders standing on the same footing, and in respect of whom there is no rule for otherwise determining the mode in which proceeds of property sold in execution shall be distributed.—*Hasoon Arra Begum v. Jawadon-nissa Sateoda Khandan*, I. L. R., 4 Cal. 29. [April 5, 1878.]

A JUDGMENT-CREDITOR in execution of his decree attached certain property belonging to his judgment-debtor while Act VIII. of 1859 was in force. This property was ultimately sold on the 9th January 1879, i.e., after Act X. of 1877 came into operation. Two days before the sale, another judgment-creditor applied to have his decree satisfied out of the same property by a rateable distribution of the proceeds which might be realized.

Held that the prior attaching creditor, by his attachment under Act VIII. of 1859, acquired, under s. 270 of that Act, a right to have his decree first satisfied in full, and that he was not deprived of this right by the change in the law introduced by Act X. of 1877, s. 295.—*Nárandás v. Báí Manchha*, I. L. R., 3 Bom. 217. [April 8, 1879.]

HELD that ss. 266 and 295 must be read together, and that an ordinary judgment-creditor is not entitled, under s. 295, to a rateable proportion of the assets realized by the sale of such house or building, under a decree obtained by another creditor for rent due to him in respect of the said house or building.—*Mániklál Venilál v. Lakha and Mánsing*, I. L. R., 4 Bom. 429. [Feb. 17, 1880.]

ONE *Mániklál* obtained a decree against L and M for rent due from them, and, in execution thereof, applied for the attachment and sale of two houses, with their compound and the grounds underneath them (in respect of which property the said rent had fallen due), belonging respectively, one to each of his judgment-debtors. The properties were, accordingly, sold on 23rd July 1879, and the sale-proceeds handed over to *Mániklál*. In the meantime, on the 18th February 1879, D, a judgment-creditor of M under a money-decree, applied for the attachment and sale of the same immoveable property (excepting the houses) of his judgment-debtor, which had been previously attached under *Mániklál's* decree for rent. On the realization of the sale-proceeds, D applied, under Act X. of 1877, s. 295, for a rateable proportion of the assets realized by the sale of M's property in execution of *Mániklál's* decree. *Held* that D was not entitled to such rateable proportion of the assets.—*Mániklál Venilál v. Lakha and Mánsing*, I. L. R., 4 Bom. 429. [Feb. 17, 1880.]

CERTAIN moveable property was attached in execution of decrees of the Small Cause Court at Ahmedabad. After the attachment, but before the sale of the attached property, other creditors of the same judgment-debtor obtained decrees against him in the Court of the Subordinate Judge at the same place, and applied to it for the attachment of the same property in execution of their decrees. The Subordinate Judge, accordingly, attached it by prohibitory orders issued to the Judge of the Small Cause Court. After the sale, the holders of the decrees obtained in the Subordinate Judge's Courts claimed a rateable share in the assets realized by the Small Cause Court, under Act X. of 1877, s. 295. *Held* that they were not entitled to any share in the assets until after satisfaction of the decrees of the Small Cause Court.—*Jetha Mádhavaji v. Nájeráli Abhráhimji*, I. L. R., 4 Bom. 472. [Mar. 23, 1880.]

AN attaching creditor has not, as such, any right to redeem a mortgage subsisting prior to his attachment.—*Soobhul Chudor Paul v. Nitye Churn Bysack*, I. L. R., 6 Cal. 663. [Aug. 21, 1880.]

THE salary of a *kárkún*, who was employed in the Second-class Subordinate Judge's Court of Anklesvar, was attached, in execution of a decree of the First-class Subordinate Judge's Court of Surat, by an order issued by the Surat Court, directing the Anklesvar Court to stop and remit, every month, a moiety of the said *kárkún's* salary to itself (the Surat Court) until satisfaction of the decree. While the decree of the Surat Court was thus in course of execution, another judgment-creditor of the *kárkún*, who had obtained a decree in the Anklesvar Court, applied to it for a rateable distribution of the moiety between himself and the Surat decree-holder, under s. 295 of the Civil Procedure Code, Act X. of 1877. *Held* that the application was not sustainable, inasmuch as the decree of the Surat Court was being executed by itself, and not by the Anklesvar Court, to which the order of the attachment was sent as the head of a department, or as "the officer whose duty it was to disburse the salary," and not as the Court executing the decree of another Court. *Jetha Mádhavji v. Nájeráli Abrahimji* (I. L. R., 4 Bom. 472) followed.—*Krishna-shankar v. Chandrashankar*, I. L. R., 5 Bom. 198. [Nov. 23, 1880.]

THE proclamation of sale required by s. 274 of the Civil Procedure Code to be made at some place adjacent to the property to be sold, and the fixing up of a copy of the order in a conspicuous part of the property, are acts which must precede the posting of the notices in the Court-house as required by s. 290. Where the sale-proceeds of a portion of several parcels of property are sufficient to satisfy the decree of a judgment-creditor who has attached the property, another judgment-creditor, although he has not attached the property, is still entitled to have the remainder of the property sold to satisfy his decree under the provisions of s. 295 of the Civil Procedure Code. Three mauzas were attached in execution of decrees obtained by A and B. Prior to the sale, C, who had also obtained a decree against the owner of the land, applied for leave to execute his decree, in order that he might participate in the sale-proceeds under s. 295 of the Civil Procedure Code. Upon the day fixed for the sale, the Deputy Commissioner was unable, through illness, to attend; and he postponed the sale for three days. Two of the mauzas were sold, and realized more than enough to satisfy the decrees of A and B. The third was then sold in satisfaction of C's decree. Upon an application by the judgment-debtor to set aside the sale on the

ground of irregularity, it appeared that notice of the sale had been posted in the Court-house more than thirty days before the date fixed for the sale, but had only been published on the properties to be sold five days before that date; that notice of the existence of a mortgage on the properties, but no further particulars, was given, and the mortgagee was allowed to purchase; and that the Deputy Commissioner had accepted the reports of the Nazir and Court-peon as to the proclamation of sale, and had refused to allow the judgment-debtor to give evidence of its insufficiency. *Held* that the proclamation of sale on the property having taken place only five days prior to the date of sale, and the particulars of the mortgage not having been given, there had been such material irregularities in the publication as to entitle the judgment-debtor to give evidence of them and the other allegations made by him in order to show that he had suffered material injury by reason of such irregularities. *Held* also that the Deputy Commissioner was not entitled to proceed upon the reports of the Nazir and Court-peon, but was bound to hear the evidence tendered by the judgment-debtor, though he was justified, under s. 291, in postponing the sale as he has done. *Held*, further, that the third judgment-creditor, who had not attached the property, was still entitled to have the sale proceeded with, and his decree satisfied under the provisions of s. 295.—*Mohunt Megh Lall Pooree v. Shik Pershad Madi*, I. L. R., 7 Cal. 34. [Mar. 18, 1881.]

APPLICATION was made for execution of a decree for money against R, and also for execution of a decree against R and another person jointly and severally. Certain immoveable property belonging to R was sold in execution of the first decree, the assets which were realized by such sale being sufficient to satisfy the amounts of both decrees. Such property was then sold a second time in execution of the second decree. *Held*, under these circumstances, that the second sale should be set aside, not being allowed with reference to the provisions of s. 295 of Act X. of 1877.—*Rati Ram v. Chiranji Lal*, I. L. R., 3 All. 579. [Mar. 26, 1881.]

THE Judge of a Court of Small Causes sitting in the exercise of his powers as such, and in the exercise of his powers as a Subordinate Judge, is not one and the same Court, but two different Courts. *Held*, therefore, that the holder of a decree made by the Judge of a Small Cause Court in the capacity of Subordinate Judge, who had applied to such Judge acting in that capacity for execution of his decree, was not thereby entitled to share rateably, under s. 225 of Act X. of 1877, in assets subsequently realized by sale in execution of a decree made by such Judge in the capacity of Judge of such Small Cause Court.—*Himalaya Bank v. Hurst*, I. L. R., 3 All. 710. [April 22, 1881.]

IN execution of a decree of a Munsif's Court, the plaintiff attached certain moneys, the proceeds of decrees which her judgment-debtor had obtained against third parties, then lying in a Small Cause Court to her credit, and subsequently obtained an order from the Munsif directing the same to be paid to her in satisfaction of her decree, which order was duly communicated to the Small Cause Court Judge. Subsequently, the defendant, who held another decree against the same judgment-debtor, attached the same sale-proceeds. The Small Cause Court Judge then proceeded, under s. 272 of the Civil Procedure Code, to enquire whether the plaintiff was entitled to any priority over the second attaching creditor, and, having decided that question in the negative, divided the sale-proceeds rateably between them. In a suit brought by the plaintiff, under the above circumstances, to recover from the defendant the portion of the sale-proceeds so paid to him, *held* that s. 295 of the Civil Procedure Code had no application, inasmuch as the plaintiff had not applied to the Small Cause Court Judge to execute her decree, and it had never been transferred to the Court for execution; and that the proviso in s. 272 is merely intended to mean that any question of title or priority is to be determined by the Court in which or in whose custody the property is, and not by the Court which made the order of attachment. *Held* also that, previous to the order by the Munsif directing the payment to be made to the plaintiff, the Small Cause Court Judge would have had jurisdiction to deal with the question he had tried; but as that order was made prior to the attachment by the defendant, the judgment-debtor had no interest in the money which could be so attached, the effect of that order being to vest the property in the money in the plaintiff, and to take it out of the disposal of the Small Cause Court Judge, and consequently the order for distribution was wrong, and the plaintiff was entitled to the decree she sought. *Quære*.—Whether an order made by a Court under s. 272 was intended by the Legislature to be a final order?—*Gopee Nath Acharje v. Achoha Bibee*, I. L. R., 7 Cal. 553. [July 5, 1881.]

MONEYS paid into Court by sale or otherwise in execution of a decree are assets from the moment of their payment into Court, and are available, under s. 295 of the Code of Civil Procedure (Act X. of 1877), for rateable distribution only amongst decree-holders who have applied for execution prior to that time.—*Vishvanath Mahesh Var v. Virchand Panchand*, I. L. R., 6 Bom. 16. [Oct. 3, 1881.]

AN application for execution must not only have been made before the assets came into the hands of the Court, but must also be on the file, and undisposed of, to entitle a decree-holder under s. 295 of the Code of Civil Procedure to share rateably in the assets realized by another decree-holder in execution of his decree against the same judgment-debtor. Where a rateable distribution was ordered among decree-holders whose applications had been struck off the file prior to realization of assets, *held* that it was open to the party injured to apply to the High Court under s. 622 to reverse the order.—*Tiruchittambala Chetti v. Seshayyagár*, 1. L. R., 4 Mad. 383. [Nov. 25, 1881.]

MONEY paid by a judgment-debtor under arrest, in satisfaction of the decree against him, are not assets realized by sale or otherwise; under s. 295 of the Civil Procedure Code (Act X. of 1877). S. 295 of the Civil Procedure Code (Act X. of 1877) must be read as if the words "from the property of the judgment-debtor" were inserted after the word "realized."—*Purshotamdass Tribhovandas v. Mahánant Surajbharathi Haribharathi*, and *Trikamlál Manchárám v. Mahánant Surajbharathi*, 1. L. R., 6 Bom. 588. [Jan. 2, 1882.]

WHERE property attached in execution of a decree of a Munsif's Court is, or becomes, subject to an attachment issued from a subordinate Judge's Court, the holder of the decree in the Munsif's Court, in order to share rateably in the assets under s. 295 of the Code of Civil Procedure, must apply to the District Court to transfer his application to the Subordinate Court.—*Gopeenath Acharje v. Achcha Bibee* (1. L. R., 7 Cal. 553) and *Jethá Mádhavji v. Nájeráli Abhráhimji* (1. L. R., 4 Bom. 472) approved.—*Muttalagiri v. Muttaiyar*, 6 Mad. 357. [April 26, 1883.]

ON the 22nd March 1878, the first mortgagee of certain property obtained a decree enforcing his mortgage. On the 25th March 1878, the second mortgagee obtained a decree enforcing his mortgage. Both decrees were made by the same Court. On the 20th June 1878, the property was put up for sale in execution of the second mortgagee's decree. The first mortgagee subsequently brought a suit for a sale of the property in satisfaction of his decree. *Held* that this was the only course open to him, and he could not have enforced satisfaction of his decree in accordance with the provisions of s. 295 of the Civil Procedure Code, inasmuch as the provisions of the first and second provisos to that section refer only to sales in execution of simple money-decrees, whereas the property in question had been sold in execution of a decree ordering its sale, and the provisions of the third proviso relate to subsequent and not prior incumbrances.—*Jagat Narain Rai v. Dhundhey Rai*, 1. L. R., 5 All 566. [May 25, 1883.]

WHERE property belonging to A has been attached under a decree, and other decree-holders than the attaching creditor have applied before realization of assets to participate in the sale-proceeds, and amongst them a creditor who has obtained a decree against A and B, such latter creditor is entitled, under s. 295, to share in the proceeds of the sale of A's property.—*Sumbhoo Nath Podder v. Luckynath Dey*, 1. L. R., 9 Cal. 920. [June 5, 1883.]

WHERE two mortgagees, in execution of their several decrees, attached the same property, of which a moiety, without further specification, was respectively mortgaged to each of them, and subsequent to the attachments the property was sold in execution of one of the decrees, *held* that, notwithstanding the whole interest of the mortgagor was intended to be sold, the purchaser took one of the moieties subject to the lien of the unsatisfied mortgagee, and that omission or neglect on the part of the Court executing the decree to give specific direction as provided by cl. b of s. 295 of the Civil Procedure Code did not prejudice the rights of the unsatisfied mortgagee or discharge his encumbrance.—*Janoky Bullubh Son v. Johiruddin Mahomed Abu Ali Soher Chowdhry*, 1. L. R., 10 Cal. 567. [Feb. 26, 1884.]

THE words "decree-holders," or "persons holding decrees for money against the same judgment-debtor," in s. 295 of the Code of Civil Procedure, signify *bona fide* decree-holders. A Court is bound, in cases falling within this section, to satisfy itself whether the claimants are *bona fide* decree-holders within the meaning of the section, and where it is unable to satisfy itself as to the *bona fides* of the claim, the Court should exclude such claimant from the distribution of assets.—*In re Sunder Dass*, 1. L. R., 11 Cal. 42. [Sep. 8, 1884.]

CERTAIN moveable property was at first attached in execution of a money-decree passed by a Subordinate Judge in his Small Cause jurisdiction, of which a part was afterwards sold. In execution of a money-decree passed by the same Subordinate Judge in his ordinary jurisdiction the remaining property was attached and sold. Prior to the date of this sale the applicant applied for execution of a money-decree passed in his favour by the same Subordinate Judge in his Small Cause jurisdiction, and prayed for rateable distribution of the proceeds along with other decree-holders. *Held* that the application

must be allowed. Although a Subordinate Judge, invested under Act XIV. of 1869, s. 28, with Small Cause powers, acquires the jurisdiction of two Courts, he does not become the Judge of two Courts, but remains the Judge of a Subordinate Court.—*Malhari v. Naro Krishna*, I. L. R., 9 Bom. 174. [Nov. 28, 1884.]

THE plaintiff, having obtained a money-decree against H and others in a suit in the Subordinate Judge's Court at Dhulia, applied for execution by attachment and sale of their immoveable property. That property was accordingly sold, but before the realization of the assets the defendant, who also had obtained a money-decree against the same judgment-debtors in the same Court in its Small Cause jurisdiction, applied for the execution of his decree by attachment and sale of the immoveable property, which had already been attached at the instance of the plaintiff. The Court, under s. 295 of the Civil Procedure Code (Act XIV. of 1882), rateably distributed the proceeds of the sale between the plaintiff and the defendant. The plaintiff now brought this suit in the Small Cause jurisdiction of the Subordinate Judge's Court at Dhulia to recover from the defendant the amount paid to him, alleging that it had been illegally paid, as the procedure laid down in s. 223 of the Code had not been followed. *Held* that a Subordinate Judge invested with Small Cause Court powers has generally to follow the procedure prescribed in the Code of Civil Procedure. This governs his proceedings both in trial and execution, whether the suit is a Small Cause or not. If the two jurisdictions assigned to the Subordinate Judge's Court and to the Subordinate Judge personally are locally co-extensive, there is no distinction of sides or branches. But where, as in some cases, the ordinary jurisdiction is wider locally than the Small Cause jurisdiction, the Court is, in that part of its territory which lies outside the Small Cause Court jurisdiction, to be regarded as a separate Court, so far, that a decree in a Small Cause should not generally be executed on property beyond the Small Cause jurisdiction without a transfer, i. e. a dealing with the execution as in a suit tried in the usual way, for reasons to be recorded in writing. As all is done by the same Judge, a suggestion and an order recorded in the case are sufficient without a formal transmission as to a distant Court.—*Dharamdas Santidas v. Vaman Govind*, I. L. R., 9 Bom. 237. [Dec. 23, 1884.]

A JUDGMENT-DEBTOR, whose property had been attached in execution of a money-decree, sold the property, and out of the price paid into Court the amount of the decree, and prayed that the attachment might be removed. While the attachment was subsisting, and prior to the sale, the holders of other money-decrees against the same judgment-debtor preferred applications, purporting to be made under s. 295 of the Civil Procedure Code, and praying that the proceeds of the sale of the property might be rateably divided between themselves and the attaching creditors. The Court refused to remove the attachment until these creditors had been paid. It was found that the sale by the judgment-debtor was a *bond fide* transaction, entered into for valuable consideration. *Held* that, inasmuch as no order for attachment of the property was passed in favour of the decree-holders in manner provided by s. 274 of the Civil Procedure Code, their claims were not entitled to the protection conferred by s. 276 against private alienations of property under attachment; that these claims were not enforceable under the attachment which was made; that the sale by the judgment-debtor was valid; and that execution of the decrees could not take place. *Per* Mahmood, J.—That s. 276 of the Civil Procedure Code, being a restriction of private rights of alienation, should be strictly construed; that before property can be subjected to such restriction, there must be a perfected attachment; that the orders passed under s. 295 did not amount to such attachment; and that, even assuming them to amount to such attachment, they not having been duly intimated and notified could not make the prohibition of s. 276 applicable to the case. *Mahadeo Dubey v. Bhola Nath Dichit* (I. L. R., 5 All. 86), *Anand Lall Dass v. Jullodhur Shaw* (14 Moore's I. A. 543), *Rameswar Singh v. Ramtanu Ghose* (4 B. L. R., A. C., 24), *Indro Chunder Bibboo v. Dunlop* (10 W. R. 264), *Gobind Singh v. Zalim Singh* (I. L. R., 6 All. 33), and *Gumani v. Hardwar Pandey* (I. L. R., 3 All. 698), referred to. Also *per* Mahmood, J.—While s. 295 of the Code gives a special right to judgment-creditors as distinguished from simple creditors, it is an essential condition precedent to the exercise of that right that there should be a sale in execution, and that its result should appear in assets realized by the sale, and therefore, until the sale takes place, no such right can be enforced. *Bishen Chunder Surma Chowdhry v. Mun Mohinee Dabee* (8 W. R. 501) referred to.—*Ganga Din v. Khushali*, I. L. R., 7 All. 702. [Feb. 23, 1885.]

S AND L held mortgage-bonds executed in their favour by the same person. S's bond was dated the 16th June 1882, and was registered, the registration being compulsory. L's bond was of prior date, the 30th December 1880, and was not registered, the registration being optional. Both instituted suits on their bonds against the obligor, and obtained decrees for sale of the property, the decrees being passed on the same day. The property was attached in execution of both decrees on the 14th August 1882. The sale-proceeds

were divided by the Court executing the decrees equally between the parties by an order dated the 1st May 1883, notwithstanding that S claimed the whole on the ground that he was an incumbrancer under a decree passed on a registered instrument, and therefore entitled to priority. S, being dissatisfied with this order, brought a suit to recover from L the moiety of the sale-proceeds paid to him. *Held* that the suit being one to compel the defendant to refund assets of an execution-sale which he was not entitled to receive, and to set aside the order of the Court executing the decree, which directed the payment of the assets to him, was expressly allowed to be brought under the provisions of the penultimate paragraph of s. 295 of the Civil Procedure Code, and could not be regarded as a suit of the nature cognizable in a Court of Small Causes. *Held* also that the registered bond of the plaintiff took effect as regards the property comprised in it against the defendant's unregistered bond under s. 50 of the Registration Act (III. of 1877), which gave priority to the incumbrance created by the former bond over the incumbrance created by the latter, and this priority was not affected by the subsequent decrees obtained on the bonds, which only gave effect to the respective rights under the bond. The meaning of s. 295 of the Civil Procedure Code is that when immoveable property is sold in execution of decrees ordering its sale for the discharge of incumbrances, the sale-proceeds are to be applied in satisfaction of incumbrances according to their priority.—*Shahi Ram v. Shib Lal*, I. L. R., 7 All. 378. [Feb. 24, 1885.]

THE cause of action given by the last para. but one of s. 295 of the Civil Procedure Code does not arise until the money has been actually paid over to the person who is alleged not to be entitled to receive the same, and a suit brought by a person claiming to be entitled to be paid a share of sale-proceeds under that section, and to recover the same from another to whom such sale-proceeds have been ordered to be paid, if brought before they have been actually paid to such other person, is premature, and should be dismissed. Every decree, by virtue of which money is payable, is, to that extent, a "decree for money" within the meaning of that term as used in s. 295, even though other relief may be granted by the decree; and the holder of such decree is entitled to claim rateable distribution of sale-proceeds with holders of decrees for money only under that section. There is nothing in s. 295 which takes away the right from a mortgagee who has obtained a decree upon his mortgage to proceed against the property of his mortgagor other than that subject to his mortgage. Thus, the holder of a mortgage decree, which directs that the amount be realized from the mortgaged property, and from the mortgagor personally, is entitled to claim rateable distribution under that section, and is not, in the first instance, bound to proceed against his mortgage-security, and exhaust that. A mortgagee who has obtained a decree on his mortgage is not restricted to proceedings in the first instance against his mortgage-security before proceeding against other property of his mortgagor, but when he sells any portion of the property, the subject of his mortgage, and purchases it himself, he is bound, before he can proceed further against the mortgagor, or claim rateable distribution under s. 295, to prove that there is still a balance due to him, and that the property sold and purchased by him realized a fair amount, the mere fact of the property having been sold at auction not being alone sufficient to prove its value, and this ought to be enquired into most carefully by the Court to which an application is made to further execute the decree, or to share rateably under s. 295.—*Hart v. Tara Prasanna Mukherji*, I. L. R., 11 Cal. 718. [June 12, 1885.]

ALTHOUGH there is no express provision in the Code laying down that a decree-holder may take out of Court the proceeds of an execution-sale before the date on which the sale is confirmed, yet s. 315 of the Code implies that this may be done. The Court, however, under special circumstances, may refuse to pay over to the decree-holder the purchase-money until the sale is confirmed, but in such case it should provide for due payment of interest on the money detained. *Held* that under the special circumstances of this case the decree-holder was not entitled to receive interest from his judgment-debtor from the date of the sale to the date on which the sale was confirmed.—*Jogendra Nath Sircar v. Gobind Chunder Agdi*, I. L. R., 12 Cal. 252. [July 11, 1885.]

THE interest of a tenant in certain land having been attached by his creditor in execution of a decree for money, the landlord attached the same land for arrears of rent, brought it to sale, and purchased it under the provisions of the Rent Recovery Act. The creditor subsequently purchased the interest of the tenant, which was sold in execution of his decree. In a suit by the landlord to have the sale to the creditor declared invalid, *held* that the landlord's purchase was subject to the creditor's attachment.—*Subramanya v. Rajaram*, I. L. R., 8 Mad. 573. [July 30, 1885.]

CERTAIN land was mortgaged to A with possession to secure the repayment of a loan of Rs. 2,000 and interest. It was stipulated in the deed that the interest on the debt

should be paid out of the profits, and the balance paid to the mortgagors. By an agreement subsequently made, it was arranged that the mortgagors should remain in possession and pay rent to A. A obtained a decree for Rs. 2,000 and arrears of rent and costs, and for the sale of the land in satisfaction of the amount decreed. The land was sold for Rs. 2,855 in March 1881. In May 1881 B, a puisne mortgagee, applied to the Court for payment to him of Rs. 500 of this sum, alleging that A was entitled only to Rs. 2,000 and Rs. 280 costs, but not to arrears of rent, in preference to his claim as second mortgagee. The claim of B was rejected on the 27th May 1881, and the whole amount paid out to A. In February 1882 B (who had filed a suit on the 23rd March 1881) obtained a decree upon his mortgage. On the 23rd May 1884, B sued to recover Rs. 510 paid to A on account of rent on the 27th May 1881. The lower Courts dismissed the suit on the grounds (1) that A was entitled to treat the arrears of rent as interest; (2) that the suit was barred by limitation. *Held*, on second appeal, that B was entitled to recover the sum claimed.—*Sivarama v. Subramanya*, I. L. R., 9 Mad. 57. [Aug. 10, 1885.]

WHERE a judgment-creditor has obtained a decree against two judgment-debtors, A and B, and in execution of that decree has attached and caused to be sold joint property belonging to such judgment-debtors, another judgment-creditor holding a decree against A alone, who has also applied for execution, is not entitled to claim, under the provisions of s. 295 of the Civil Procedure Code, to share rateably in the sale-proceeds, the decree not being against the same judgment-debtor, and a Court having no power in execution-proceedings to ascertain the respective shares of joint judgment-debtors. In *Shumbhoo Nath Peddar v. Luckynath Dey* (I. L. R., 9 Cal. 920), it was not intended to lay down that a person who has obtained a decree for money against a single judgment-debtor is entitled to come in and share rateably with a person who has obtained a decree against the same judgment-debtor and other persons.—*Deboki Nundun Sen v. Hart*, I. L. R., 12 Cal. 294. [Aug. 24, 1885.]

WHEN a property is sold in execution of a decree, it cannot be sold again at the instance of another decree-holder, who may have attached it before the attachment effected by the decree-holder under whose decree it is actually sold; and when a judicial sale takes place, all previous attachments effected upon the property sold fall to the ground.—*Kashy Nath Roy Chowdhry v. Sarbanand Shah*, I. L. R., 12 Cal. 317. [Sep. 2, 1885.]

AT an execution-sale held by an inferior Court at the instance of the decree-holder (the Court itself, the decree-holder, and the auction-purchaser being unaware of any objection to the exercise of a jurisdiction which the Court would ordinarily be competent to exercise), A purchased certain property, and this sale was confirmed. It appeared subsequently that this same property had, two years previous to the sale, been attached by a superior Court. On a sale of this property being advertized by the superior Court, A objected on the ground that he had already purchased it. This objection was overruled, and a sale was held by the superior Court, at which A again became the purchaser. A then brought a suit against the decree-holder and the judgment-debtor in the inferior Court to recover as damages the sum paid by him at the sale. The suit was dismissed. *Held* that, although the superior Court had been wrong in insisting on the second sale, and in not requiring the amount received by the inferior Court to have been deposited in the superior Court, and then rateably distributed amongst the creditors of the judgment-debtors, yet the sale by the inferior Court was a good and valid sale; and A's suit was therefore rightly dismissed. *Obhoy Churn Coondoo v. Golam Ali* (I. L. R., 7 Cal. 410) adopted.—*Bykant Nath Shah* *v. Rajendro Narain Rai*, I. L. R., 12 Cal. 333. [Sep. 10, 1885.]

A SUIT under s. 295 of the Code of Civil Procedure to compel refund of assets paid in execution of a decree to a person not entitled thereto is cognizable by a Court of Small Causes constituted under Act XI. of 1865. *Shahi Ram v. Shib Lal* (I. L. R., 7 All. 378) dissented from.—*Harihara v. Subramanya*, I. L. R., 9 Mad. 250. [Dec. 9, 1885.]

G AND C held decrees against B, and took out execution of them; and the judgment-debtor's property was attached, but no sale took place. The judgment-debtor paid into Court the sum of Rs. 1,200 on account of G's decree. *Held* that G was entitled to the sum of Rs. 1,200 paid into Court by the judgment-debtor, and it could not be regarded as assets realized by sale or otherwise in execution of a decree, so as to be rateably divisible between the decree-holders under s. 295 of the Civil Procedure Code, inasmuch as it could not be said that there was a realization from the property of the judgment-debtor.—*Gopal Dai v. Chunni Lal*, I. L. R., 8 All. 67. [Dec. 14, 1885.]

IN execution of a decree against M, the plaintiff attached and advertized for sale certain property in mauza A. At that time there were pending proceedings in execution of two other decrees obtained against M by the first and second defendants respectively.

These two decrees were obtained on a bond executed by M, by which an eight-anna share of mauza A was hypothecated as collateral security; and in execution of those decrees the defendants brought to sale, and themselves purchased, not an eight-anna share only, but the whole of mauza A, and were allowed by the Court to set-off the purchase-money against the amounts due to them under their decrees. At the same time the plaintiff's execution-case was struck off on 30th June 1880. In a suit brought by the plaintiff under s. 295 of the Civil Procedure Code for his share of the sale-proceeds of mauza A, in which the plaintiff alleged fraud on the part of the defendants in selling the whole mauza under their decrees, of which he only became aware in July 1882, from which time he dated his cause of action, the defendants denied the fraud, and contended that the suit should have been brought within a year of the order of the 30th June 1880; that a set-off having been allowed to the defendants, the plaintiff was not entitled to any rateable distribution; and that, if any rateable distribution were allowed, they were entitled to have an allowance made in respect of a mortgage which the plaintiff held in a two anna share of mauza A, which they had paid off subsequently to the transactions now in question. *Held* that the existence of the order of the 30th June 1880 was not inconsistent with the plaintiff's right, and the suit was therefore not barred as not having been brought within one year of that order. *Held* also that the fact of the set-off being allowed in exercise of the power given in s. 294 of the Code, instead of actual payment into Court, did not alter the substantial nature of the transaction, so as to render the purchase-money less applicable to the satisfaction of the debts of other attaching creditors. *Held*, further, that the defendants were not entitled to deduct the sum paid by them to clear off the plaintiff's mortgage, from the amount of the purchase-money, before the Court could determine the amount rateably distributable among the parties concerned. *Quære*—Whether they were even entitled to reckon the amount so paid as one of the claims in respect of which, with others, a rateable distribution should be made?—*Taponidi Hordanund Bharati v. Mathura Lal Bhagat*, I. L. R., 12 Cal. 499. [Dec. 22, 1885.]

In execution of a decree against six persons the plaintiffs had certain property brought to sale, the proceeds of which were brought into Court. The defendants, who held five separate decrees against some of the persons against whom the plaintiffs' decree was obtained, applied to have the amount in Court rateably distributed; and in accordance with an order of the Court, dated 13th September 1880, this was done, the proceeds being distributed in proportion to the amounts of the decrees. In a suit brought on 24th August 1883 against the defendants, on the allegation that the plaintiffs were entitled to the whole of the proceeds, or in the alternative for distribution on a different principle, *held* that the suit was one to set aside the order, and not having been brought within one year from the date of the order, was barred by limitation under art. 13, sch. 2 of Act XV. of 1877. *Ram Kishan v. Bhawani Das* (I. L. R., 1 All. 333) distinguished. *Held* also that there was no misjoinder of causes of action by reason of all the defendants being included in one suit.—*Gour Prosad Kundu v. Ram Ratan Sircar*, I. L. R., 13 Cal. 159. [April 19, 1886.]

THE words of s. 295 of the Code of Civil Procedure, "assets realized by sale or otherwise in execution of a decree," provide only for a case where, by the process of the Court in execution of a decree, property has become available for distribution amongst judgment-creditors. The words "by sale or otherwise" should be construed as meaning by sale or by other process of execution provided for by the Civil Procedure Code.—*Sew Bux Bogla v. Shib Chunder Sen*, I. L. R., 13 Cal. 225. [July 30, 1886.]

A, AND subsequently B, obtained decree against X, in execution of which the same land was attached, and B obtained an order for rateable distribution. Neither decree was satisfied. A then applied for attachment of other property, and the sale was fixed for 28th September. On 26th September B filed a petition for further attachment under ss. 250, 274, and also a petition for rateable distribution under s. 295 of the Code of Civil Procedure. The District Judge rejected the application for execution as being too late, and then the application under s. 295, because no application for execution was pending. *Held*, on appeal, that the petition for execution was wrongly rejected, but that the High Court could not, under s. 622 of the Code of Civil Procedure, revise the order rejecting the application under s. 295 for rateable distribution.—*Venkataraman v. Mahalingayyan*, I. L. R., 9 Mad. 608. [Aug. 4, 1886.]

WHERE one decree-holder had attached certain land, and another decree-holder against the same debtor had entitled himself to rateable distribution of the assets under s. 295 of the Code of Civil Procedure, *held* that the latter was entitled to apply, under s. 311 of the Code, to set aside the sale on the ground of material irregularity.—*Lakshmi v. Kuttanni*, I. L. R., 10 Mad. 57. [Sep. 24, 29, 1886.]

(b) Rules as to Moveable Property.

Extending to
Provincial S.
C. Courts.

296. If the property to be sold be a negotiable instrument or a share in any public Company or Corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker at the market-rate of the day.

297. In the case of other moveable property, the price of each lot shall be paid for at the time of sale, or as soon after as the officer holding the sale directs, and, in default of payment, the property shall forthwith be again put up and sold.

On payment of the purchase-money, the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

THE provisions of s. 293, Act X. of 1877 (Civil Procedure Code), for making a defaulting purchaser at a sale liable for any deficiency on a re-sale, extend to all sales, whether of moveable or immovable property, and also to re-sales held under ss. 297, 306, and 308.—*Ramdhani Sahai v. Rajrani Kooer*, I. L. R., 7 Cal. 337. [April 22, 1881.]

298. No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation, or (if such other be the purchaser) for the recovery of the specific property, and for compensation in default of such recovery.

299. When the property sold is a negotiable instrument or other moveable property of which actual seizure has been made, the property shall be delivered to the purchaser.

300. When the property sold is any moveable property to which the judgment-debtor is entitled subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession, prohibiting him from delivering possession of the property to any person except the purchaser.

301. When the property sold is a debt not secured by a negotiable instrument, or is a share in any public Company, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary, or other proper officer of the Company from permitting any such transfer or making any such payment to any person except the purchaser.

302. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public Company is standing is required to transfer such instrument or share, the Judge may endorse the instrument or the certificate of the share, or may execute such other document as may be necessary.

The endorsement or execution shall be in the following form or to the like effect :—"A B, by C D, Judge of the Court of (or as the case may be); in a suit by E F against A B."

Until the transfer of such instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same; and any endorsement made, or document executed, or receipt signed, as aforesaid, shall be as valid and effectual for all purposes as if the same had been made or executed or signed by the party himself.

303. In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly. Extending to Provincial S. C. Courts.

Vesting order in case of other property.

(c) *Rules as to Immoveable Property.*

What Courts may order sales of land.

304. Sales of immoveable property in execution of a decree may be ordered by any Court other than a Court of Small Causes.

A SHIKMI ghatwali tenure, held under the superior ghatwal, is not liable to be sold in execution, nor are its proceeds liable to attachment for satisfaction of the debt due from its holder.—*Bally Dobe v. Gansai Deo*, I. L. R., 9 Cal. 388. [July 31. 1882.]

305. When an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by mortgage or lease or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may, on his application, postpone the sale of property comprised in the order for sale, for such period as it thinks proper, to enable him to raise the amount.

In such case the Court shall grant a certificate to the judgment-debtor authorizing him, within a period to be mentioned therein, and notwithstanding anything contained in section 276, to make the proposed mortgage, lease, or sale: provided that all moneys payable under such mortgage, lease, or sale, shall be paid into Court, and not to the judgment-debtor.

Provided also that no mortgage, lease, or sale under this section, shall become absolute until it has been confirmed by the Court.

THE sale of immoveable property to the highest bidder for a price which subsequently appears to be too low is not a material irregularity in publishing or conducting the sale. A decree-holder or a judgment-debtor cannot apply to set aside a sale on the ground of the price realized being too low.—*Lakshmi v. Krishnabhat*, I. L. R., 8 Bom. 424, [April 24, 1884.]

306. On every sale of immoveable property under this chapter, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per centum on the amount of his purchase-money to the officer conducting the sale, and, in default of such deposit, the property shall forthwith be put up again and sold.

THE requirement of s. 306 of the Civil Procedure Code applying to all cases of sale of immoveable property under chap. 19, a decree-holder buying with permission given under s. 294, and desiring to set-off his purchase-money against the amount of the decree, is not exempt from the necessity of making at the time of sale a deposit of 25 per cent. on the amount of such purchase-money; and such deposit must be made in cash. The option so to set-off the purchase-money cannot be exercised by the purchaser until the confirmation and payment of expenses of the sale. Where, however, all parties interested in the

amount to be deposited have waived their right to have that amount deposited in cash, the sale ought not to be set aside on the ground that a cash deposit has not been made.—*Gopal Singh v. Roy Bunwarree Lall Sahoo*, 5 C. L. R. 181. [Sep. 6, 1879.]

A CO-SHAREE in undivided immoveable property, of which a share is sold in execution of a decree, does not, under Act X. of 1877, s. 310, acquire the right of pre-emption as against a stranger to whom such share has been knocked down, by merely asserting such right at the time of sale, and fulfilling the conditions of sale required by ss. 306 and 307 of that Act. He must bid at the sale, and as high as the stranger, before he can acquire a right of pre-emption under that section.—*Tej Singh v. Gobind Singh*, 1. L. R., 2 All. 850. [April 2, 1880.]

THE provisions of s. 293, Act X. of 1877 (Civil Procedure Code), for making a defaulting purchaser at a sale liable for any deficiency on a re-sale, extend to all sales, whether of moveable or immoveable property, and also to re-sales held under ss. 297, 306, and 308.—*Ramdhani Sahai v. Rajrani Kooer*, 1. L. R., 7 Cal. 337. [April 22, 1881.]

THE person declared to be the purchaser of property put up for sale in execution of a decree did not, as required by s. 306 of the Civil Procedure Code, pay a deposit of twenty-five per centum on the amount of his purchase immediately after such declaration, but on a date subsequent to the date on which the property was put up for sale. Held that there was no sale at all of the property.—*Intizam Ali Khan v. Narain Singh*, 1. L. R., 5 All. 316. [Jan. 31, 1883.]

307. The full amount of purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other holiday, then on the first office-day after the fifteenth day.

A CO-SHAREE in undivided immoveable property, of which a share is sold in execution of a decree, does not, under Act X. of 1877, s. 310, acquire the right of pre-emption as against a stranger to whom such share has been knocked down, by merely asserting such right at the time of sale, and fulfilling the conditions of sale required by ss. 306 and 307 of that Act. He must bid at the sale, and as high as the stranger, before he can acquire a right of pre-emption under that section.—*Tej Singh v. Gobind Singh*, 1. L. R., 2 All. 850. [April 2, 1880.]

308. In default of payment within the period mentioned in the last preceding section, the deposit, after defraying the expenses of the sale, shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property, or to any part of the sum for which it may subsequently be sold.

THE provisions of s. 293, Act X. of 1877 (Civil Procedure Code), for making a defaulting purchaser at a sale liable for any deficiency on a re-sale, extend to all sales, whether of moveable or immoveable property, and also to re-sales held under ss. 297, 306, and 308.—*Ramdhani Sahai v. Rajrani Kooer*, 1. L. R., 7 Cal. 337. [April 22, 1881.]

UNDER the rules of the High Court, dated 21st June 1882, a payment into the Government treasury is equivalent to a payment into Court for the purposes of s. 308 of the Code of Civil Procedure, 1882.—*Srinivasa v. Malayacha*, 1. L. R., 7 Mad. 211. [Oct. 22, 1883.]

309. Every re-sale of immoveable property, in default of payment of the purchase-money within the period allowed for immoveable property, such payment, shall be made after the issue of a fresh notification in the manner and for the period hereinbefore prescribed for the sale.

THE provisions of s. 293, Act X. of 1887 (Civil Procedure Code), for making a defaulting purchaser at a sale liable for any deficiency on a re-sale, extend to all sales, whether of moveable or immoveable property, and also to re-sales held under ss. 297, 306, and 308.—*Ramdhani Sahai v. Rajrani Kooer*, 1. L. R., 7 Cal. 337. [April 22, 1881.]

310. When the property sold in execution of a decree is a share of un-

Co-sharer of share of undivided estate sold in execution to have preference in bidding.

divided immoveable property, and two or more persons, of whom one is a co-sharer, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the co-sharer.

A CO-SHARER in undivided immoveable property, of which a share is sold in execution of a decree, does not, under Act X. of 1877, s. 310, acquire the right of pre-emption as against a stranger to whom such share has been knocked down, by merely asserting such right at the time of sale, and fulfilling the conditions of said required by ss. 306 and 307 of that Act. He must bid at the sale, and as high as the stranger, before he can acquire a right of pre-emption under that section.—*Tej Singh v. Gobind Singh*, I. L. R., 2 All. 850. [April 2, 1880.]

THE provisions of s. 310 of Act X. of 1877 are not applicable in a case where the property sold is not a share of undivided immoveable property, but the rights and interests of a mortgagee in such a share.—*Jairam Das v. Beni Prasad*, I. L. R., 3 All. 15. [July 9, 1880.]

A SHARE of undivided immoveable property was put up for sale in execution of a decree, and was knocked down to M. Before it was knocked down to him, A, the decree-holder, who had obtained permission to bid for and purchase such share, and who was a co-sharer of such share, bid the same sum as that for which it was knocked down to M, claiming the right of pre-emption. The Court executing such decree subsequently made an order confirming the sale of such share in favour of A. M appealed, impugning the propriety of the confirmation of the sale in favour of A. *Held* that such appeal would not lie.—*Munir-ud-din Khan v. Abdul Rahim Khan*, I. L. R., 3 All. 674. [Mar. 29, 1881.]

THE requirements of s. 310 of Act X. of 1877 are not satisfied by the co-sharer preferring his claim to the right of pre-emption before the property is knocked down, and offering to pay a sum equal to that bid by the highest bidder. That section contemplates a distinct bid by the co-sharer in the ordinary manner of offering bids. *Tej Singh v. Gobind Singh* (I. L. R., 2 All. 850) followed.—*Hira v. Unas Ali Khan*, I. L. R., 3 All. 827. [May 30, 1881.]

A PERSON claiming to be a co-sharer in certain undivided immoveable property, a share of which had been sold in execution of a decree, objected to the confirmation of the sale in favour of the person recorded as the auction-purchaser, and prayed that it might be confirmed in his favour, with reference to the provisions of s. 310 of the Civil Procedure Code. The Court disallowed the objection, and confirmed the sale in favour of the auction-purchaser. The objector thereupon applied to the High Court for a revision of the order of the lower Court under s. 622 of the Civil Procedure Code. *Held* that, having been allowed to object to the confirmation of the sale, and treated as a party to the proceeding held therein, it was competent for him to make such application, notwithstanding that he was not one of the persons mentioned in s. 311 of the Code; that there being no appeal in the case, so far as he was concerned, the High Court was competent to entertain the application under s. 622 of the Code; but that, as he was not one of the persons who was competent to avail himself of the provisions of s. 311, he had no *locus standi* to justify his application to the lower Court, and the application for revision must therefore be dismissed.—*Bisheshwar Kuar v. Hari Singh*, I. L. R., 5 All. 42. [July 18, 1882.]

311. The decree-holder, or any person whose immoveable property has

Application to set aside sale of land on ground of irregularity.

been sold under this chapter, may apply to the Court to set aside the sale on the ground of a material irregularity in publishing or conducting it ;

but no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.

THE property of a judgment-debtor was proclaimed and advertized for sale in execution of a decree on a certain day. The proclamation set out particulars of the property, but subsequent to such proclamation a portion of the property was released to a third party. Notwithstanding this fact, no fresh proclamation was made, and the sale took place on the day originally fixed. *Held* that the omission to issue a fresh proclamation was a material irregularity, inasmuch as the judgment-debtor was entitled to have a

proclamation issued accurately describing the property to be sold, and that such proclamation should be published thirty days before the sale. See also *Gopeenath Dobey v. Roy Luchmeeput Singh Bahadur* (I. L. R., 3 Cal. 542).—*Shib Prokash Singh v. Sardar Doyal Singh*, I. L. R., 3 Cal. 544. [Mar. 20, 1878.]

THE holder of a decree, in execution of which property is sold, is absolutely bound under Act X. of 1877, s. 294, to have express permission from the Court before he can purchase the property; and whether this objection is taken and pressed or otherwise, a sale to him is invalid, unless he has got explicit permission. The use, at a sale, of language by an intending bidder in disparagement of the property for the purpose of influencing bystanders, and deterring them from bidding for the property, is a "material irregularity," sufficient to render the sale invalid, under s. 311 of the same Act.—*Rukhinee Bulbhu v. Brojonath Sircar*, I. L. R., 5 Cal. 308. [April 1, 1879.]

ALTHOUGH the auction-purchaser may not apply under Act X. of 1877, s. 311, to have a sale set aside, he may be a party to the proceedings after an application has been made under that section, and then, if an order is made against him, he can appeal from such order under s. 588.—*Kapthi Ram v. Bankey Lal*, I. L. R., 2 All. 396. [June 11, 1879.]

WHERE, after a judgment-debtor has applied, under Act X. of 1877, s. 311, to have a sale set aside, the auction-purchaser is made a party to the proceedings, and the sale is set aside, the auction-purchaser can appeal against the order setting aside the sale.—*Gopal Singh v. Dular Kuar*, I. L. R., 2 All. 352. [Aug. 11, 1879.]

ON the day fixed for the sale of certain immoveable property in the execution of a decree the Court made an order postponing the sale, but the sale had been effected before such order reached the officer conducting it. The Court, on application having been made to set aside the sale, passed an order confirming it. Subsequently, an application by the decree-holder for a review of this order having been granted, the Court passed an order setting the sale aside as illegal. Held that the sanction to the sale originally given having been withdrawn, the sale could not legally be held, and the sale which was effected, the order of postponement notwithstanding, was unlawful and invalid, and in reviewing its first order, and in setting aside the sale as illegal, the Court executing the decree had not acted *ultra vires*, and its action was not otherwise illegal (H. C. R., N. W. F., 1874, p. 354).—*Mian Jan v. Man Singh*, I. L. R., 2 All. 686. [Feb. 5, 1880.]

WHEN a judgment-debtor has died after decree, but before application has been made to execute the decree, the Court, before directing the attachment and sale of any property to proceed, must issue a notice to the party against whom the execution is applied for to show cause why the decree should not be executed against him, and its omission to do so will invalidate the entire subsequent proceedings.—In the Matter of the Petition of *Ramesuri Dassee*; *Ramesuri Dassee v. Doorgadass Chatterjee*, I. L. R., 6 Cal. 103. [May 25, 1880.]

THE provisions of s. 13 of Act XV. of 1877 are not applicable to proceedings in the execution of a decree.—*Ahsan Khan v. Ganga Ram*, I. L. R., 3 All. 185. [Aug. 17, 1880.]

AN application under s. 311 of Act X. of 1877 to set aside a sale in execution of a decree having been made by the judgment-debtor, the Court executing the decree (Subordinate Judge) disallowed the objections, and passed an order confirming such sale. The judgment-debtor subsequently applied to the Subordinate Judge for a review of judgment. The Subordinate Judge, without recording his reasons for granting such application, irregularly proceeded at once to pass an order setting aside such sale, without cancelling the previous order confirming it. The auction-purchaser appealed to the District Judge. That officer, treating the appeal as one from an order granting an application for review of judgment, entertained it, and set aside the Subordinate Judge's second order. Held that the District Judge was not justified in entertaining such appeal, such order not being one granting an application for review, but one setting aside a sale, and as such not appealable. Before a review of judgment is granted, an order granting the application for review, and the reason for granting the same, should be recorded.—*Bhairon Din Singh v. Ram Sahai*, I. L. R., 3 All. 316. [Nov. 9, 1880.]

THE sale of immoveable property by an amin on a close holiday is not illegal, nor is it an irregularity in publishing or conducting the sale.—*Bisram Mahton v. Sahib-un-nissa*, I. L. R., 3 All. 333. [Nov. 22, 1880.]

CERTAIN immoveable property was attached in execution of a decree made by a Subordinate Judge, and also in execution of a decree made by a Munsif. These decrees were held by the same person, and the judgment-debtor was the same person. Such property was sold in execution of both decrees. On the application of the judgment-debtor,

who brought into Court the amount due on the decree made by the Subordinate Judge, and with the consent of the decree-holder and the auction-purchaser, the Subordinate Judge made an illegal order setting aside such sale. Subsequently, on the application of the decree-holder and the auction-purchaser, the Munsif made an order confirming such sale. *Per Spankie, J.*—That the Subordinate Judge had not any jurisdiction under s. 285 of the Civil Procedure Code to deal with such sale as regards the decree made by the Munsif, and the Munsif was not precluded by that section from confirming such sale as regards the decree made by him by reason that the Subordinate Judge, a Court of a higher grade, had made an order setting it aside. *Per Oldfield, J.*—That, having regard to the provisions of that section, it was doubtful whether the Munsif was competent to confirm such sale; but inasmuch as the Subordinate Judge only intended to set it aside as regards the decree made by him, and his order was illegal, and the Munsif's order had done substantial justice, there was no reason to interfere.—*Chunni Lal v. Dehi Prasad, I. L. R., 3 All. 356. [Dec. 20, 1880.]*

THE omission to give the notice required by s. 248 of Act X. of 1877 to the judgment-debtor, on application for execution of the decree, affects the regularity of the sale which subsequently takes place in execution of the decree, and the validity of the entire execution-proceedings. *Ramesuri Dass v. Doorgadass Chatterjee (I. L. R., 6 Cal. 103) followed. Held, therefore, where execution of a decree was applied for against the legal representative of a deceased judgment-debtor, and the notice required by s. 248 of Act X. of 1877 was not given to such legal representative, and certain immoveable property belonging to the deceased judgment-debtor was sold, that such sale had been properly set aside by the Court executing the decree by reason of such omission. Quere.—Whether such omission was an irregularity in "publishing or conducting" the sale within the meaning of s. 311 of the Act?—Imam-un-nissa Bibi v. Luakat Husain, I. L. R., 3 All. 424. [Jan. 10, 1881.]*

THE procedure to be followed upon the sale of an under-tenure is that prescribed by the Civil Procedure Code. S. 311 does not apply only to sales made under chap. 19 of the Code, and the sale of an under-tenure may be set aside upon any of the grounds mentioned in that section.—*Azizoonnessa Khattoon v. Gora Chand Dass, I. L. R., 7 Cal. 163. [Mar. 18, 1881.]*

THE omission to specify in the proclamation the amount of Government revenue payable in respect of the property sold in execution of a decree is an irregularity contemplated by s. 311 of the Code of Civil Procedure, and where it appeared that an inadequate price was obtained in a case where such an omission was made, the High Court set aside the sale, although the irregularity had not been made a ground of objection in the lower Court. See *Sree Gridhari Singh v. Hurdeo Narain Singh (L. R., 3 Ind. Ap. 230)*.—*Mohabir Pershad Singh v. Olpherts (R.), 9 C. L. R. 134. [April 22, 1881]*

ON the 21st August 1876, certain immoveable property belonging to M was put up for sale, and was purchased by R. On the 20th April 1877, such sale was set aside under s. 256 of Act VIII. of 1859, on the ground that the order attaching such property and the notifications of sale had not, as required by s. 222, been signed by the Court executing the decree, but by the munsarim of the Court. On the 27th June 1877, M conveyed such property to H, who purchased it *bona fide*, and for value, and satisfied the incumbrances existing thereon. On the 15th April 1878, R sued H and M to have the order setting aside such sale set aside, and to have such sale confirmed in his favour, on the ground that it had been improperly set aside under s. 256 of Act VIII. of 1859, the judgment-debtor not having been prejudiced by the irregularities in respect whereof such sale had been set aside. *Held (by Oldfield, J.)* that although such sale might have been improperly set aside, yet inasmuch as the order of attachment and the notifications of sale could have no legal effect, having been signed by the munsarim of the Court executing the decree, and not by the Court, as required by s. 222 of Act VIII. of 1859, and inasmuch as it would be inequitable, after the incumbrances on such property had been satisfied and the state of things changed, to allow R, after standing by for a year and permitting dealings with the property, to come in and take advantage of the change of circumstances, and obtain a property, become much more valuable, at the price he originally offered, R ought not to obtain the relief which he sought. *Held (by Straight, J.)* that the fact that the Court executing the decree had not signed the order of attachment and the notifications of sale vitiated the proceedings in execution *ab initio*, and rendered the sale which R desired to have confirmed void, and R's suit therefore failed, and had properly been dismissed.—*Ram Dial v. Mahtab Singh, I. L. R., 3 All. 701. [April 28, 1881.]*

WHEN liberty is given to a decree-holder to bid at the sale of the judgment-debtor's property, he is bound to exercise the most scrupulous fairness in purchasing that property, and if he or his agent dissuades others from purchasing at the sale, that of itself is a sufficient ground why the purchase should be set aside. Where a decree-holder was joint in family with the manager of an infant defendant, and the defendant's property was to be sold in execution of the decree, *held* that the decree-holder ought not to be granted leave to purchase at the sale, because any purchase made by him would be for the benefit of the family of which the manager of the infant defendant was one of the members; and it would, in fact, be a purchase by an agent of the property of his principal.—*Woopendro Nath Sircar v. Brojendronath Mundul*, I. L. R., 7 Cal. 346. [May 6, 1881.]

UNDER ss. 289 and 274 of the Civil Procedure Code, it is necessary that a copy of the sale-proclamation should be affixed to some conspicuous place on the property attached; and the omission to do so is a material irregularity within the meaning of s. 311 of the Code of Civil Procedure. If it is proved that the price obtained for property sold at an execution-sale is greatly inadequate, and if it be also proved that there has been a material irregularity in publishing or conducting the sale, the Court will presume that the irregularity was the cause of the inadequacy of price, until proof is given to the contrary.—*Kalytara Chowdhrair v. Ramcoomar Goopta*, I. L. R., 7 Cal. 466. [May 25, 1881.]

ON an application under s. 311 of the Civil Procedure Code (Act X. of 1877) to set aside a sale, it appeared that there had been a material irregularity in publishing the sale; but no witnesses were called to prove that substantial injury had been caused thereby. It also appeared that seventeen days after the applicant had applied for proclamations to be issued to his witnesses, he deposited the requisite fees; and that, subsequently, there was a delay of seven days in the office in issuing such proclamations, which were ultimately issued only three days prior to the day fixed for the hearing. On the applicant alleging that, in consequence of such delay, he had not been allowed a fair opportunity to produce his witnesses, *held* that the Court cannot presume that substantial injury has been caused from the mere fact of there having been a material irregularity in publishing a sale; but when both a material irregularity and substantial injury have been proved, the Court may reasonably presume that the substantial injury is due to such irregularity. *Held* also that the applicant, having been guilty of laches himself, could not be allowed to set up the delay in the office as a ground for the non-production of his witnesses.—*Bonomali Mozumdar v. Woomesh Chunder Bundopadhyay*, I. L. R., 7 Cal. 730. [July 28, 1881.]

THE mere fact that the amount of rent payable in respect of a tenure brought to sale in execution of a decree is not stated in the sale-proclamation is not a material irregularity within the meaning of s. 311 of the Civil Procedure Code (Act X. of 1877), though if the amount of rent payable were stated to be more than it actually was, that might constitute such an irregularity as tending to lessen the price at which purchasers might be willing to buy. Where decrees for arrears of rent had been obtained by fractional shareholders in a tenure, and in execution thereof a moiety of the tenure had been sold, it appeared that the other moiety had been sold at the same time in execution of a mortgage-decree against some of the judgment-debtors in the rent-suits, on an objection being taken to the confirmation of such sale on the ground that the whole tenure should have been sold in execution of the rent-decrees, *held* that all that the decree-holders were entitled to have sold was the right, title, and interest of their judgment-debtors, and that they were in the position of ordinary creditors having no lien on the tenure; and that, consequently, the mortgagor being entitled to enforce his lien against the moiety covered by his mortgage, the sale of the remaining moiety in satisfaction of the rent-decrees was a good sale, and could not be set aside.—*Mohendro Coomar Dutt v. Heera Mohun Coondoo*, and *Ishaneswary v. Gopal Das Dutt*, I. L. R., 7 Cal. 723. [Aug. 4, 1881.]

THE words, "any person whose immoveable property has been sold," in s. 311 of the Code of Civil Procedure, do not include a person who has purchased the same property at a prior execution-sale, such prior sale not having been confirmed.—In the Matter of the Petition of *Bhagabuti Churn Bhattacharjee Chowdhry v. Bisheshwar Sen and others*, I. L. R., 8 Cal. 367. [Feb. 9, 1882.]

HELD that the fact of a sale of immoveable property in execution of a decree having taken place before thirty days from the proclamation of sale being made on the property had expired was not a material irregularity in the publication of the sale. *Mohunt Megh Lal Pooree v. Shib Pershad Madi* (I. L. R., 7 Cal. 34) dissented from.—*Rahchandrar Bahadur v. Kamta Prasad*, I. L. R., 4 All. 300. [Feb. 27, 1882.]

A PERSON claiming to be a co-sharer in certain undivided immoveable property, a share of which had been sold in execution of a decree, objected to the confirmation of the sale in favour of the person recorded as the auction-purchaser, and prayed that it might

be confirmed in his favour, with reference to the provisions of s. 310 of the Civil Procedure Code. The Court disallowed the objection, and confirmed the sale in favour of the auction-purchaser. The objector thereupon applied to the High Court for revision of the order of the lower Court under s. 622 of the Civil Procedure Code. *Held* that, having been allowed to object to the confirmation of the sale, and treated as a party to the proceeding held therein, it was competent for him to make such application, notwithstanding that he was not one of the persons mentioned in s. 311 of the Code; that there being no appeal in the case, so far as he was concerned, the High Court was competent to entertain the application under s. 622 of the Code; but that, as he was not one of the persons who was competent to avail himself of the provisions of s. 311, he had no *locus standi* to justify his application to the lower Court, and the application for revision must therefore be dismissed.—*Bisheshar Kuar v. Hari Singh*, I. L. R., 5 All. 42. [July 18, 1882.]

AN objection to the validity of a sale of revenue-paying land, on the ground that the revenue assessed upon it had not been stated in the proclamation of the intended sale in accordance with s. 287 of Act X of 1877, was taken, for the first time, in the Court of appeal; an application to set aside the sale, on the ground that it had taken place without proclamation made, having been rejected by the Court of first instance, which found that proclamation had been made. *Held* that the objection was taken too late, although, if properly taken in the Court of first instance, it would have been good to the extent that not stating the amount of the revenue was an irregularity; substantial damage, resulting from it, remaining to be proved, as required by s. 311 of Act X of 1877. *Held* also that inadequacy of price having been alleged as substantial damage, without having been proved to be the effect of the non-statement of the revenue, the applicant had not (as required by s. 311) proved, to the satisfaction of the Court, that he had sustained substantial damage by reason of such irregularity.—*Macnaghten v. Mahabir Pershad Singh*, I. L. R., 9 Cal. 656. [Nov. 24, 1882.]

UNDER Act XII. of 1879, Form 149 of Sch. IV. of the Code of Civil Procedure provided that sixty days should elapse between a sale in execution of a decree and its confirmation. A sale having been confirmed before the expiry of sixty days, *held* that the sale was not rendered inoperative, and that its effect was not postponed by reason of the provision in Form No. 149. Where a suit was brought to recover money from the defendant, who was the karnavan of a Malabar tarwad, and it was not alleged in the plaint that the defendant was sued as karnavan, or that the debt was binding on the tarwad, *held* that a sale of tarwad property in execution of the decree was not binding on the members of the tarwad, and therefore that art. 12 of sch. 2 of the Indian Limitation Act, 1877, did not apply to a suit brought by other members of the tarwad to recover the land sold in execution of the decree.—*Haji v. Atharman*, I. L. R., 7 Mad. 512. [July 8, 1883.]

THE words "on the spot where the property is attached" in s. 289 of the Civil Procedure Code refer to each property attached, and not to a group of separate properties attached under one proceeding or order in one execution-case; and therefore, when distinct properties are proclaimed for sale in one execution, the omission to affix a copy of the proclamation in each of such properties amounts to an irregularity in the publication of the sale. *Held* also that where there is no evidence to connect the two elements of irregularity and injury under s. 311, it must appear, before a Court can set aside an execution-sale, that the injury complained of is the reasonable and natural consequence of the irregularity, and attributable to it alone.—*Tripura Sundari v. Durga Churn Pal*, I. L. R., 11 Cal. 74. [Sep. 13, 1884.]

Per Petheram, C.J., and Oldfield, Brodhurst, and Duthoit, JJ.—An order passed under the first clause of s. 312 of the Civil Procedure Code, after an objection made under the provisions of s. 311 has been disallowed, is appealable under art. 16 of s. 588. *Per Mahmood, J.*—An application made under s. 311 can be disposed of only under s. 312, and if the Court rejects the objection to the sale, the order must be regarded as an order "refusing to set aside a sale of immoveable property" under the 1st para. of s. 312, and, therefore, appealable as falling under the purview of art. 16 of s. 588. *Lalman v. Russu Lal* (Weekly Notes, 1882, p. 117), and *Rajan Kuar v. Lalta Prasad* (Weekly Notes, 1883, p. 178), dissented from by Mahmood, J.—*Tota Ram v. Khub Chaud*, I. L. R., 7 All. 253. [Dec. 13, 1884.]

AN infringement of the rule contained in s. 290 of the Civil Procedure Code is an irregularity vitiating a sale in execution of a decree, and is something more than a material irregularity in publishing a sale to which s. 311 refers.—*Bakhshi Nand Kishore v. Malak Chand*, I. L. R., 7 All. 289. [Jan. 23, 1885.]

IF in an application for execution the Court erroneously holds that the application is not barred, and orders a sale, the order, though erroneous and liable to be set aside in the way prescribed by the procedure law, is not a nullity, but remains in full force until set

aside, and a sale held in pursuance of such order is, until set aside, a valid sale; a suit to set aside such a sale is governed by art. 12, cl. 2 of sch. 2 of Act XV. of 1877. The word "disallowed" in s. 312 of the Civil Procedure Code has no reference to an order passed on an appeal, but refers to the disallowance of the objection by the Court before which the proceedings under s. 311 are taken. On the 15th June 1878, a judgment-debtor filed a petition objecting to execution of a decree against him proceeding on the ground that the decree was barred. On the 18th November 1878, that objection was overruled, and certain of his property sold. Against the order overruling his objection the judgment-debtor appealed, and ultimately on the 13th January 1880 the order was set aside by the High Court, and the decree was held to have been barred. Pending these proceedings, the judgment-debtor also, on the 17th December 1878, applied, under the provision of s. 311 of the Civil Procedure Code (Act XIV. of 1882), to set aside the sale on the ground of material irregularity, but that application was ultimately rejected on the 17th May 1879, and the sale was confirmed on the 21st May 1879. On the 2nd April 1880, the judgment-debtor applied to set aside the sale, on the ground that the decree in execution of which it had taken place had been held to be barred, and though an order setting aside the sale was made by the original Court, it was subsequently set aside by the High Court on the 13th April 1881, as having been made without jurisdiction. The judgment-debtor now brought a suit on the 4th January 1882 upon the same grounds to set aside the sale and recover possession. *Held* that the suit was barred.—*Mahomed Hossein v. Purundur Mahto*, I. L. R., 11 Cal. 287. [Jan. 26, 1885.]

HELD that an objection made by one whose property was attached and sold in execution of a decree for the payment of money for the performance of which he had become a surety, that he was no party to the decree, and his property was not liable to be attached and sold, and therefore the sale was invalid, was not an objection entertainable under s. 311 of the Civil Procedure Code, and was consequently no ground for setting aside the sale under that section, especially as it was preferred for the first time in appeal, and, moreover, might have been taken under s. 278 at the time of attachment, when the objector would have had his remedy as therein provided.—*Hub Lal v. Kanhia Lal*, I. L. R., 7 All. 365. [Feb. 4, 1885.]

AN objection by a judgment-debtor to a sale in execution of a decree on the ground that the property which was the subject of sale was not legally saleable, is not a matter which can be entertained by the Court under s. 311 of the Civil Procedure Code, so as to afford a ground for setting aside the sale on account of material irregularity in publishing or conducting it. *Ram Gopal v. Khiali Ram* (I. L. R., 6 All. 448) and *Janki Singh v. Ablakh Singh* (I. L. R., 6 All. 393) distinguished. *Per* Mahmood, J.—The scope of s. 244 of the Civil Procedure Code is limited to matters connected with the execution of the decree between the decree-holder and the judgment-debtor, and covers all the questions which may arise between the decree-holder and the judgment-debtor relating to the execution, &c., of the decree. Questions that may arise after the sale are not, strictly speaking, questions relating to the execution, discharge, or satisfaction of the decree, within the meaning of cl. 3, s. 244; but as soon as there has been a sale, the execution of the decree, so far as the decree-holder is concerned, is over, and the question whether the purchaser has purchased anything by the sale is not a question as to the execution of the decree-holder's decree. Also *per* Mahmood, J.—The expression, "conducting the sale," as used in s. 311 of the Civil Procedure Code, does not include any proceedings unconnected with the actual carrying out of the sale; but refers to the action of the officer who makes the sale, and not to anything done antecedent to the order of sale.—*Olpherts v. Mahabir Porshad* (L. R., 10 Ind. App. 25) referred to.—*Ramchhaibar Misr v. Bechu Bhagat*, I. L. R., 7 All. 641. [Mar. 21, 1885.]

HELD that persons other than the decree-holders or the persons whose property was sold in execution of decree were not competent to apply to the Court under s. 311 of the Civil Procedure Code to set aside the sale. M, in whose name property had been purchased at an execution-sale which was improperly set aside, brought a suit to have the order setting aside the sale reversed, and the sale confirmed in her favour, and for a declaration that the property was not liable to be sold in execution of a decree of the defendants against third persons, under which it had been attached and advertized for sale. *Held* that such a suit could only be maintained under s. 42 of the Specific Relief Act (I. of 1877), but that s. 244 of the Civil Procedure Code indicated the intention of the Legislature that such questions should be determined in the execution department, and, reading together the provisions of ss. 244, 278, and 283 of the Code, the suit was premature, and therefore not maintainable.—*Man Kuar v. Tara Singh*, I. L. R., 7 All. 583. [Mar. 23, 1885.]

A SUBORDINATE Judge made an order for the sale, in execution of a decree, of certain immoveable property, which was "ancestral" within the meaning of the notification by the Local Government, No. 671, dated the 30th August 1880, under which execution of

such decree should have been transferred to the Collector; and such property was sold accordingly. *Held* that the order for the sale of such property having been made without jurisdiction, the sale was void, and should be set aside.—*Sukhdeo Raj v. Sheo Ghulam*, I. L. R., 4 All. 382. [April 5, 1885.]

In 1879, D obtained a decree against S. S gave security for the satisfaction of the decree, whereupon D agreed not to take proceedings in execution. In breach of this agreement D in the same year applied for execution, and sold certain immoveable property belonging to S, of which K became the purchaser. K did not apply for possession until 1883, in which year he applied for and obtained possession of the property. S alleged that he then for the first time became aware of the sale, and that by the fraud of D and K he had been kept in ignorance of the execution-proceedings taken by D in breach of the above-mentioned agreement, and within thirty days after K obtained possession, he (S) applied for a reversal of the orders which had been passed in the aforesaid fraudulent proceedings. The Subordinate Judge held that the application was barred by art. 166 of sch. 2 of the Limitation Act (XV. of 1877), and referred the applicant to a separate suit to set aside the sale. On application to the High Court, *held* that a separate suit would not lie, and that the relief sought by S could only be obtained, at all events, against D, by an application under s. 241 of the Civil Procedure Code (Act XIV. of 1882). *Held* also that art. 166 of sch. 2 of the Limitation Act (XV. of 1877) did not apply. That article as amended by s. 108 of Act XII. of 1879 only applies to applications made under s. 311 or s. 294 of the Civil Procedure Code seeking to set aside a sale on the ground of a material irregularity in publishing or conducting the sale, or on the ground that the decree-holder has purchased without the permission of the Court.—*Sakharām Govind Kale v. Damodar Akharām Gujar*, I. L. R., 9 Bom. 468. [April 29, 1885.]

WHERE an application is made to set aside a sale in execution of a decree on the ground of irregularity, it is not to be presumed from the proved existence of irregularity and injury that the latter occurred by reason of the former, in the absence of evidence to show that the injury is the result of the irregularity. *Macnaghten v. Mahabir Pershad Singh* (I. L. R., 9 Cal. 656) and *Lala Mobaruk Lal v. Secretary of State for India in Council* (I. L. R., 11 Cal. 200) discussed.—*Satish Ghunder Rai Chowdhuri v. Thomas*, I. L. R., 11 Cal. 658. [May 22, 1885.]

UNDER the terms of s. 294 of the Civil Procedure Code, it is discretionary with the Court to set aside an execution-sale at which the decree-holder has bid and purchased without first obtaining permission from the Court so to do; and in dealing with such a case, the Courts, although considering the matter as an irregularity in the conduct of the sale, will not interfere with the sale, unless it can be shown that the judgment-debtor has suffered some substantial injury arising from such irregularity.—*Mathura Das v. Nathuni Lal Mata*, I. L. R., 11 Cal. 731. [June 3, 1885.]

WHERE a Court, professing to act under s. 311 of the Code of Civil Procedure, set aside a sale in execution of a decree without proof of substantial injury having been suffered by the applicant, *held* that such order was passed without jurisdiction within the meaning of s. 622 of the said Code.—*Lakshmana v. Najimuddin*, I. L. R., 9 Mad. 145. [Aug. 28, 1885.]

In a sale of immoveable property in execution of a decree, the proclamation of sale notified that the decree-holder held two charges on the property, aggregating about Rs. 1,000. There was, in fact, one charge only, amounting to about Rs. 800. *Held* that the error in the proclamation of sale amounted to such an irregularity in publishing the sale and putting up the property to the biddings of the public as must have materially marred the fairness of the auction and affected the price, and that the sale must therefore be set aside, on the ground of material irregularity in publishing and conducting it.—*Kanji Mal v. Bibi Sailo*, I. L. R., 8 All. 116. [Feb. 1, 1886.]

THE mortgagees of a certain tenure obtained, on 11th September 1884, under s. 86 of the Transfer of Property Act, a decree for foreclosure, which declared that, on failure to pay the amount found due, the mortgagor's right of redemption should be barred on 11th March 1885; this time was subsequently extended on the application of the mortgagor to 30th April 1885. On the 6th April 1885, in execution of a decree for arrears of rent obtained by the superior holder of the tenure against the mortgagor, the tenure was sold free from incumbrances. The mortgagees applied under s. 311 of the Civil Procedure Code to have the sale set aside for material irregularity. *Held* that under s. 86 of the Transfer of Property Act, the mortgagees had such an interest in the property as brought them within the words of s. 311, "person whose property has been sold," and entitled them to make the application.—*Rakhal Chunder Bose v. Dwarka Nath Misser*, I. L. R., 13 Cal. 346. [June 22, 1886.]

WHERE one decree-holder had attached certain land, and another decree-holder against the same debtor had entitled himself to rateable distribution of the assets under s. 295 of the Code of Civil Procedure, *held* that the latter was entitled to apply, under s. 311 of the Code, to set aside the sale on the ground of material irregularity.—*Lakshmi v. Kuttunni*, 1 L. R., 10 Mad. 57. [Sep. 29, 1886.]

THE words, “any person whose immovable property has been sold,” in s. 311, are sufficiently wide to include a person who is neither the decree-holder nor the judgment-debtor nor the auction purchaser, but who alleges that the property sold in execution is his.—*Abdul Huq Mozoomdar v. Mohini Mohun Shaha*, 1 L. R., 14 Cal. 240. [Dec. 2, 1886.]

ALTHOUGH s. 312 of the Civil Procedure Code contemplates that objections to a sale under s. 311 shall be filed before an order for confirmation is passed, if the precipitate action of the Court has led to the confirmation of a sale before the time allowed for filing objections to the sale has expired, whether or not that Court could entertain such objections after confirming the sale, the High Court on appeal is bound to interfere and to see that objections which by law the appellant is empowered to make are heard and determined before a sale of his property is confirmed or becomes absolute. An application under s. 311 of the Civil Procedure Code, on behalf of a judgment-debtor who was a minor, was rejected on the ground that the applicant did not legally represent the minor, and the Court thereupon confirmed the sale. A second application to the same effect was then filed on behalf of the minor by his guardian, and was rejected on the ground that the Court had already confirmed the sale, and was precluded from entertaining objections after such confirmation, prior to which no proper application of objection had been filed. From this order the judgment-debtor appealed. *Held* that the appeal must be considered to be one from an order under the first paragraph of s. 312 of the Civil Procedure Code, confirming the sale after disallowing the appellant's objection, and that it would, therefore, lie. *Held* that, assuming the first application on the minor's behalf to have been rightly rejected, the second was made by a duly authorized guardian, and, with regard to s. 7 of the Limitation Act (XV. of 1887), was not barred by limitation; and the judgment-debtor had, therefore, a right to make it, and the Court should have entertained and dealt with it before proceeding to confirm the sale or grant a sale-certificate. The order disallowing the application and the order confirming the sale were set aside, and the case remanded for disposal of the appellant's objections. *Phoolbas Koonwur v. Jogeshur Sahoy* (1 L. R., 1 Cal. 226) referred to.—*Baldeo Singh v. Kishan Lal*, 1 L. R., 9 All. 411. [Feb. 11, 1887.]

312. If no such application as is mentioned in the last preceding section

Effect of objection being disallowed, and objection be made, or if such application be made and the objection be disallowed, the Court shall pass an order confirming the sale as regards the parties to the suit and the purchaser.

If such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale.

No suit to set aside, on the ground of such irregularity, an order passed under this section, shall be brought by the party against whom such order has been made.

ON the 16th June 1877, certain property was sold in execution of a decree, and on the 29th June 1877, the judgment-debtor, the owner of the property, applied to the Court to set aside the sale, and the sale was set aside by the Subordinate Judge on the 24th January 1878. The decree-holder, who was the purchaser of the property, appealed to the Court of the District Judge, who reversed the order of the Subordinate Judge. *Held* that the Judge had no jurisdiction to do so, as the proceedings must be taken to be governed by Act VIII. of 1859 and not by Act X. of 1877. *Ranjit Singh v. Meharban Koer* (2 C. L. R. 391) cited and followed.—*Burkut Hossein v. Majidoonnissa*, 3 C. L. R. 208. [July 7, 1878.]

AN Appellate Court has a discretionary power to substitute or order a new appellant or respondent after the period of limitation prescribed for an appeal. The right, title, and interest of G in certain immovable property was attached and notified for sale in the execution of a money-decree held by T. It was also attached and notified for sale in the execution of a money-decree held by S and R. The same date was fixed for both sales. The officer conducting sales first sold the property in execution of T's decree, and T purchased the property. He then sold the property in execution of the decree held by S and R, and K purchased the property. The Court executing the decrees confirmed the sale to

T, granting him a sale-certificate, and disallowing K's objection to the confirmation. It also confirmed the sale to K, ordering the purchase-money to be paid to S and R, and disallowing K's objection to the confirmation; but it refused to grant K a sale-certificate, on the ground that, as the sale to T had been confirmed, and a sale-certificate granted to him, it could not give K possession of the property. In a suit by K against S and R to recover his purchase-money, *held* (distinguishing the suit from the cases in which it had been held that, when the right, title, and interest of a judgment-debtor in a particular property is sold, there is no warranty that he has any right, title, or interest, and therefore the auction-purchaser cannot recover his purchase-money if it turns out that the judgment-debtor had no interest in the property) that the rule of *caveat emptor* did not apply, and the suit was maintainable. The provisions of s. 257 of Act VIII. of 1859 apply to applications made under s. 256 of that Act, and to those only. *Held*, therefore, that inasmuch as K objected to the confirmation of the sale to him on the ground that the Court was not competent to confirm a sale which had by its previous order been nullified, and not on any of the grounds mentioned in s. 256 of Act VIII. of 1859, K was not precluded by the terms of s. 257 of that Act from maintaining his suit. Where the Court executing two decrees made separate orders directing the sale on the same date of certain immovable property in execution of such decrees, the officer conducting sales was not bound to sell such property once for all in execution of both decrees, and his selling such property separately was, therefore, not an irregularity in the conduct of the sales.—*Court of Wards on behalf of the Raja of Kautit v. Gaya Prashad*, I. L. R., 2 All. 107. [Jan. 28, 1879.]

PROCEEDINGS to execute a decree commenced when the former Code of Civil Procedure (Act VIII. of 1859) was in force; but property belonging to the judgment-debtor was sold in pursuance of those proceedings on the 14th November 1877, after the new Code (Act X. of 1877) came into operation. Subsequently, at the instance of the applicant, the Court made an order, setting aside the sale on the ground of irregularity. *Held* that this order was governed by the former Code, and was consequently not subject to appeal.—*Chinto Jhosi v. Krisháji Náráyan*, I. L. R., 3 Bom. 214. [April 3, 1879.]

CERTAIN immovable property was put up for sale in the execution of B's decree, and was purchased by him. Subsequently, on the same day, such property was put up for sale in the execution of S's decree, and was purchased by him. B objected to the confirmation of the sale to S on the ground that S's decree had been satisfied previously for such sale, and the Court executing the decrees made an order setting aside such sale on that ground. S thereupon sued B to have such order set aside, and to have such sale confirmed, and to obtain possession of such property. *Held* that, inasmuch as such order had not been made under s. 257 of Act VIII. of 1859, but had been made at the instance of a purchaser under another decree, and B's decree, as a matter of fact, had not been satisfied, S's suit to have such order set aside was maintainable.—*Sangam Ram v. Sheobart Bhugath*, I. L. R., 3 All. 112. [Aug. 2, 1880.]

THE COURT executing a decree having made an order setting aside a sale under Act VIII. of 1859 of immovable property in the execution of the decree, the purchaser at such sale sued the decree-holder and the judgment-debtor to have such order set aside, and to have such sale confirmed in his favour. *Held* (Oldfield, J., dissenting) that the suit was maintainable, the provision of s. 257 precluding an appeal from an order setting aside a sale, and not a suit to contest the validity of such an order; and that the order setting aside the sale in this case being *ultra vires*, the auction-purchaser was entitled to the relief he claimed.—*Diwan Singh v. Bharath Singh*, I. L. R., 3 All. 206. [Aug. 23, 1880.]

HELD (Oldfield, J., dissenting) that a suit by the purchaser at a sale of immovable property in execution of a decree, which has been set aside under ss. 311 and 312 of Act X. of 1877, to have such sale confirmed, on the ground that there was no irregularity in the publication or conduct thereof, is not barred by the last clause of s. 312 or by the last clause of s. 588, but is maintainable.—*Azim-ud-din v. Baldeo*, I. L. R., 3 All. 554. [Mar. 9, 1881.]

Per Petheram, C.J., and Oldfield, Brodhurst, and Duthoit, JJ.—An order passed under the first clause of s. 312 of the Civil Procedure Code, after an objection made under the provisions of s. 311 has been disallowed, is appealable under art. 16 of s. 588. *Per Mahmood, J.*—An application made under s. 311 can be disposed of only under s. 312, and if the Court rejects the objection to the sale, the order must be regarded as an order “refusing to set aside a sale of immovable property” under the 1st para. of s. 312, and therefore appealable as falling under the purview of art. 16 of s. 588. *Lalman v. Russu Lal* (Weekly Notes, 1882, p. 117), and *Rajan Kuar v. Lalta Prasad* (Weekly Notes, 1883, p. 178), dissented from by Mahmood, J.—*Tota Ram v. Khub Chand*, I. L. R., 7 All. 253. [Dec. 13, 1884.]

If in an application for execution the Court erroneously holds that the application is not barred, and orders a sale, the order, though erroneous and liable to be set aside in the way prescribed by the procedure law, is not a nullity, but remains in full force until set aside, and a sale held in pursuance of such order is, until set aside, a valid sale; a suit to set aside such a sale is governed by art. 12, cl. a, of sch. 2 of Act XV. of 1877. The word "disallowed" in s. 312 of the Civil Procedure Code has no reference to an order passed on an appeal, but refers to the disallowance of the objection by the Court before which the proceedings under s. 311 are taken. On the 15th June 1878, a judgment-debtor filed a petition objecting to execution of a decree against him proceeding on the ground that the decree was barred. On the 18th November 1878, that objection was overruled, and certain of his property sold. Against the order overruling his objection the judgment-debtor appealed, and ultimately, on the 13th January 1880, the order was set aside by the High Court, and the decree was held to have been barred. Pending these proceedings the judgment-debtor also, on the 17th December 1878, applied, under the provision of s. 311 of the Civil Procedure Code (Act XIV. of 1882), to set aside the sale on the ground of material irregularity, but that application was ultimately rejected on the 17th May 1879, and the sale was confirmed on the 21st May 1879. On the 2nd April 1880, the judgment-debtor applied to set aside the sale, on the ground that the decree in execution of which it had taken place had been held to be barred, and though an order setting aside the sale was made by the original Court, it was subsequently set aside by the High Court on the 13th April 1881, as having been made without jurisdiction. The judgment-debtor now brought a suit on the 4th January 1882 upon the same grounds to set aside the sale and recover possession. *Held* that the suit was barred.—*Mahomed Hossein v. Purundur Mahto, I. L. R., 11 Cal. 1885.* [Jan. 26, 1885.]

HELD that an objection made by one whose property was attached and sold in execution of a decree for the payment of money for the performance of which he had become a surety, that he was no party to the decree, and his property was not liable to be attached and sold, and therefore the sale was invalid, was not an objection entertainable under s. 311 of the Civil Procedure Code, and was consequently no ground for setting aside the sale under that section, especially as it was preferred for the first time in appeal, and, moreover, might have been taken under s. 278 at the time of attachment, when the objector would have had his remedy as therein provided.—*Hub Lal v. Kanhia Lal, I. L. R., 7 All. 365.* [Feb. 4, 1885.]

An objection by a judgment-debtor to a sale in execution of a decree on the ground that the property which was the subject of sale was not legally saleable is not a matter which can be entertained by the Court under s. 311 of the Civil Procedure Code, so as to afford a ground for setting aside the sale on account of material irregularity in publishing or conducting it. *Ram Gopal v. Khiali Ram (I. L. R., 6 All. 448)* and *Janki Singh v. Adlakh Singh (I. L. R., 6 All. 393)* distinguished. *Per* Mahmood, J.—The scope of s. 244 of the Civil Procedure Code is limited to matters connected with the execution of the decree between the decree-holder and the judgment-debtor, and covers all the questions which may arise between the decree-holder and the judgment-debtor relating to the execution, &c., of the decree. Questions that may arise after the sale are not, strictly speaking, questions relating to the execution, discharge, or satisfaction of the decree, within the meaning of cl. 3, s. 244; but as soon as there has been a sale, the execution of the decree, so far as the decree-holder is concerned, is over, and the question whether the purchaser has purchased anything by the sale is not a question as to the execution of the decree-holder's decree. Also *Per* Mahmood, J.—The expression "conducting the sale," as used in s. 311 of the Civil Procedure Code, does not include any proceedings unconnected with the actual carrying out of the sale, but refers to the action of the officer who makes the sale, and not to anything done antecedent to the order of sale.—*C'pherts v. Mahabir Pershad (L. R., 10 Ind. Ap. 25)* referred to.—*Rarchhaibar Misr v. Bechu Bhagat, I. L. R., 7 All. 641.* [Mar. 12, 1885.]

In a sale of immoveable property in execution of a decree, the proclamation of sale notified that the decree-holder held two charges on the property, aggregating about Rs. 1,000. There was, in fact, one charge only, amounting to about Rs. 800. *Held* that the error in the proclamation of sale amounted to such an irregularity in publishing the sale and putting up the property to the biddings of the public as must have materially marred the fairness of the auction and affected the price, and that the sale must therefore be set aside, on the ground of material irregularity in publishing and conducting it.—*Kanji Mal v. Bibi Sailo, I. E. R., 8 All. 116.* [Feb. 1, 1886.]

CERTAIN immoveable property was attached in execution of a decree made by a Subordinate Judge, and also in execution of a decree made by a Munsif. These decrees were held by the same person, and the judgment-debtor was the same person. Such property

was sold in execution of both decrees. On the application of the judgment-debtor, who brought into Court the amount due on the decree made by the Subordinate Judge, and with the consent of the decree-holder and the auction-purchaser, the Subordinate Judge made an illegal order setting aside such sale. Subsequently, on the application of the decree-holder and the auction-purchaser, the Munsif made an order confirming such sale. *Per Spankie, J.*—That the Subordinate Judge had not any jurisdiction under s. 285 of the Civil Procedure Code to deal with such sale as regards the decree made by the Munsif, and the Munsif was not precluded by that section from confirming such sale as regards the decree made by him by reason that the Subordinate Judge, a Court of a higher grade, had made an order setting it aside. *Per Oldfield, J.*—That, having regard to the provisions of that section, it was doubtful whether the Munsif was competent to confirm such sale; but inasmuch as the Subordinate Judge only intended to set it aside as regards the decree made by him, and his order was illegal, and the Munsif's order had done substantial justice, there was no reason to interfere.—*Chunni Lal v. Debi Prasad, I. L. R., 3 All. 356. [Dec. 20, 1886.]*

ALTHOUGH s. 312 of the Civil Procedure Code contemplates that objections to a sale under s. 311 shall be filed before an order for confirmation is passed, if the precipitate action of the Court has led to the confirmation of a sale before the time allowed for filing objections to the sale has expired, whether or not that Court could entertain such objections after confirming the sale, the High Court on appeal is bound to interfere and to see that objections which by law the appellant is empowered to make are heard and determined before a sale of his property is confirmed or becomes absolute. An application under s. 311 of the Civil Procedure Code, on behalf of a judgment-debtor who was a minor, was rejected on the ground that the applicant did not legally represent the minor, and the Court thereupon confirmed the sale. A second application to the same effect was then filed on behalf of the minor by his guardian, and was rejected on the ground that the Court had already confirmed the sale, and was precluded from entertaining objections after such confirmation, prior to which no proper application of objection had been filed. From this order the judgment-debtor appealed. *Held* that the appeal must be considered to be one from an order under the first paragraph of s. 312 of the Civil Procedure Code, confirming the sale after disallowing the appellant's objection, and that it would, therefore, lie. *Held* that, assuming the first application on the minor's behalf to have been rightly rejected, the second was made by a duly authorized guardian, and, with regard to s. 7 of the Limitation Act (XV. of 1877), was not barred by limitation; and the judgment-debtor had, therefore, a right to make it, and the Court should have entertained and dealt with it before proceeding to confirm the sale or grant a sale-certificate. The order disallowing the application and the order confirming the sale were set aside, and the case remanded for disposal of the appellant's objections. *Phoolbas Koonwur v. Jogeshur Sahoy (I. L. R., 1 Cal. 226) referred to.—Baldeo Singh v. Kishan Lal, I. L. R., 9 All. 411. [Feb. 11, 1887.]*

313. The purchaser at any such sale may apply to the Court to set aside the sale, on the ground that the person whose property purported to be sold had no saleable interest therein, and the Court may make such order as it thinks fit: Provided that no order to set aside a sale shall be made, unless the judgment-debtor and the decree-holder have had opportunity of being heard against such order.

In execution of a decree obtained on the 5th August 1876, the property of the judgment-debtor was attached on the 17th August 1877. The sale of the attached property was postponed pending a suit instituted under the direction of the Court by a claimant to the attached property. This suit having been dismissed on the 13th September 1878, the decree-holder, on the 25th September, applied for a sale of the property, and the 16th December was fixed for the sale. Meanwhile, on the 13th December 1877, a decree had been obtained by another party against the judgment-debtor, and in execution of this decree the same property was attached on the 13th September 1878, and under this attachment a sale took place on the 15th November following. On the 16th December, as fixed, the property was again sold under the first attachment. The auction-purchaser at that sale, on the 6th January 1879, applied, under s. 313 of the Civil Procedure Code, to set aside the sale on the ground that the judgment-debtor had no saleable interest. *Held* (reversing the decision of the lower Court) on the authority of the following cases—*Gogaram v. Kartick Chander Singh (9 W. R. 614)*, *Lala Joogul Lal v. Bhuka Chowdhary (9 W. R. 244)*, and *Kartick Chander Singh v. Gogaram (2 W. R., Misc., 48)*—which the Court

felt bound to follow, while it doubted their correctness, that the sale must be set aside.—*Chutka Panda v. Goburdhone Dass*, 6 C. L. R. 85. [Feb. 13, 1880.]

A PERSON who purchases immoveable property at a sale in execution of a decree, knowing that the judgment-debtor has no saleable interest therein, is not entitled to the benefit of the provisions of s. 313 of Act X. of 1877, which were designed for the protection of persons who innocently and ignorantly purchase valueless property.—*Mahibir Prasad v. Dhumani Das*, F. L. R., 3 All. 527. [Feb. 14, 1881.]

IN execution of a rent-decree, dated 26th May 1869, certain immoveable property was sold in execution, and purchased by the appellant on the 21st February 1880, no mention having been made of any incumbrances. On the 9th May 1879, a decree was obtained upon a mortgage executed by the original judgment-debtor, and in execution of that decree the property which had already been sold was attached, and, on the 11th March, again sold in execution of the second decree, it being alleged that the property was covered by the mortgage which was prior in date to the former decree. The appellant thereupon applied that the sale of the 21st March should be set aside under s. 313 of the Civil Procedure Code, and his purchase-money directed to be returned to him. *Held* that if, as a fact, the property sold was covered by the mortgage, there was, under the circumstances, no such saleable interest in the judgment-debtor at the time of the sale on the 21st February 1880 as would prevent the operation of s. 313 of the Civil Procedure Code, inasmuch as under that sale the purchaser would be unable to get the particular property purchased by him; and that the sale must be set aside.—*Naharmul Marwari v. Sadut Ali*, 8 C. L. R. 468. [April 6, 1881.]

WHERE, in execution of a decree passed against a person who had previously been adjudicated an insolvent, portions of his property (then vested in the Official Assignee) are attached and sold, the purchaser is entitled to have the sale set aside under s. 313 of the Code of Civil Procedure, notwithstanding that the Official Assignee acquiesces in the sale, and is content to receive the sale-proceeds.—*Dinobundhoo Pal v. Shoshee Mohun Pal*, I. L. R., 9 Cal. 217. [June 14, 1882.]

S. 313 of the Civil Procedure Code only applies to cases in which the judgment-debtor has no saleable interest in the property sold. It does not apply to cases where the judgment-debtor has no saleable interest in a portion only of the property.—In the Matter of the Petition of Ram Coomar Dey; *Ram Coomar Dey v. Shushee Bhooashun Ghose*, I. L. R., 9 Cal. 626. [Feb. 7, 1883.]

THE fact that property sold in execution of a decree is subject to a mortgage upon which a decree has been obtained—which fact is not disclosed prior to the proclamation of sale—is not sufficient to enable an auction-purchaser to set aside the sale on the ground that the judgment-debtor had “no saleable interest” in the property, within the meaning of s. 313 of the Civil Procedure Code. *Naharmul Marwari v. Sadut Ali* (8 C. L. R. 468) distinguished.—*Protap Chunder Chuckerbutty & Pantioty*, I. L. R., 9 Cal. 506. [Feb. 20, 1883.]

IN the event of the death of the judgment-debtor, notice must issue to his representative before the sale of immoveable property can be set aside under s. 313 of the Code of Civil Procedure, albeit that the section makes no express provision for the appearance of the representative.—*Bálá Kádar v. Gulám Mohidin*, I. L. R., 7 Bom. 424. [July 19, 1883.]

A MISREPRESENTATION or concealment in the sale-notification, which induces a purchaser to buy a property for much more than it is really worth—although that misrepresentation or concealment may be fraudulent—is no ground for setting aside a sale under s. 313 of the Civil Procedure Code. The meaning of s. 313 is, that when a purchaser under an execution-sale buys a property which turns out to have no existence at all, or to be of no saleable value whatever, the Court may then set aside the sale under s. 313.—*Durga Sundari Devi v. Govinda Chandra Addy*, I. L. R., 10 Cal. 368. [Dec. 14, 1883.]

UNDER s. 313 of the Code of Civil Procedure a purchaser at a sale in execution of a decree may resist the confirmation of the sale and prevent its conclusion, while under s. 315 he may apply, after the confirmation of the sale, for a refund of the purchase-money on the ground that nothing passed by the sale. To entitle a purchaser, under para. 2 of s. 315 of the Code of Civil Procedure, to a refund of purchase-money, it is not necessary that a Court should have decided in other proceedings that the judgment-debtor had no saleable interest in the property which purported to be sold, or that the purchaser should have obtained actual possession and have been deprived thereof.—*Sivaramá v. Rámá*, I. L. R., 8 Mad. 99. [Nov. 20, 1884.]

Per Petheram, O.J., and Oldfield, Brodhurst, and Duthoit, JJ.—An order passed under the first clause of s. 312 of the Civil Procedure Code, after an objection made under

the provisions of s. 311 has been disallowed, is appealable under art. 16 of s. 588. *Per* Mahmood, J.—An application made under s. 311 can be disposed of only under s. 312, and if the Court rejects the objection to the sale, the order must be regarded as an order “refusing to set aside a sale of immoveable property” under the 1st para. of s. 312, and therefore appealable as falling under the purview of art. 16 of s. 588. *Lalman v. Russu Lal* (Weekly Notes, 1882, p. 117) and *Rajan Kuar v. Lalta Prasad* (Weekly Notes, 1883, p. 178) dissented from by Mahmood, J.—*Tota Ram v. Khub Chand*, I. L. R., 7 All. 258. [Dec. 13, 1884.]

Held that an application under s. 313 of the Civil Procedure Code by the purchaser at a sale in execution of a decree, which had been transferred for execution to the Collector, in accordance with the rules prescribed by the Local Government, was entertainable by the Civil Courts, and the Collector had no jurisdiction, under the Code or under Notification No. 671 of 1880, to entertain it. *Madho Prasad v. Haysa Kuar* (I. L. R., 6 All. 314) referred to.—*Nathu Mal v. Lachmi Narain*, I. L. R., 9 All. 43. [Oct. 2, 1886.]

THE fact that property sold in execution of a decree is incumbered, even when the incumbrance covers the probable value of the property, is not sufficient to sustain a plea that the person whose property is sold had no saleable interest therein. S. 313 of the Civil Procedure Code contemplates that either the judgment-debtor had no interest at all, or that the interest was not one he could sell; and the fact that the property may fetch little or nothing if sold does not affect the question. *Naharimal v. Sadat Ali* (8 C. L. R. 468) distinguished. *Protap Chunder Chuckerbutty v. Panioty* (I. L. R., 9 Cal. 506) referred to. *Sant Lal v. Ramji Das*, I. L. R., 9 All. 167. [Dec. 15, 1886.]

314. No sale of immoveable property in execution of a decree shall

Confirmation of sale.

become absolute until it has been confirmed by the Court.

UNDER s. 314 of the Code of Civil Procedure (Act XIV. of 1882) the Civil Court cannot, upon or without application, refuse to confirm a sale on the ground that the price bid is too low.—*Lakshmi v. Krishnabhat*, I. L. R., 8 Bom. 424. [April 24, 1884.]

Per Petheram, C.J., and Oldfield, Brodhurst, and Duthoit, JJ.—An order passed under the first clause of s. 312 of the Civil Procedure Code, after an objection made under the provisions of s. 311 has been disallowed, is appealable under art. 16 of s. 588. *Per* Mahmood, J.—An application made under s. 311 can be disposed of only under s. 312, and if the Court rejects the objection to the sale, the order must be regarded as an order “refusing to set aside a sale of immoveable property” under the 1st para. of s. 312, and therefore appealable as falling under the purview of art. 16 of s. 588. *Lalman v. Russu Lal* (Weekly Notes, 1882, p. 117) and *Rajan Kuar v. Lalta Prasad* (Weekly Notes, 1883, p. 178) dissented from by Mahmood, J.—*Tota Ram v. Khub Chand*, I. L. R., 7 All. 258. [Dec. 13, 1884.]

If sale set aside, price to be returned to purchaser.

315. When a sale of immoveable property is

set aside under section 312 or 313,

or when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold, and the purchaser is, for that reason, deprived of it,

the purchaser shall be entitled to receive back his purchase-money (with or without interest as the Court may direct) from any person to whom the purchase-money has been paid.

The repayment of the said purchase-money and of the interest (if any) allowed by the Court may be enforced against such person under the rules provided by this Code for the execution of a decree for money.

WHERE immoveable property was sold in the execution of a decree under the provisions of Act VIII. of 1859, and the auction-purchaser, having been subsequently deprived of such property on the ground that the judgment-debtor had no saleable interest in it, applied under Act X. of 1877, s. 315, to the Court executing such decree for the return of the purchase-money, held that the Court could entertain the application. In the Matter of the Petition of Mulo (I. L. R., 2 All. 290) dissented from in a subsequent case, where it was held that Act X. of 1877, s. 315, cannot have retrospective effect so as to apply to a sale which had taken place before the Act came into operation.—*Mira Lal v. Karim-un-nisa*, I. L. R., 2 All. 780. [Mar. 23, 1880.]

A JUDGMENT-DEBTOR, whose property had been sold in execution of the decree under Act VIII. of 1859, appealed from the order disallowing his application to set aside the sale, after Act X. of 1877 (Civil Procedure Code) came into force. The Appellate Court set aside the sale. The purchaser sued the decree-holder for interest on the purchase-money and the expenses of the sale, the purchase-money having been returned to him, under the order of the Court excepting the decree, without interest and less such expenses. *Held* by the Full Bench that the provisions of Act X. of 1877, and not of Act VIII. of 1859, were applicable to the determination of the matter in dispute in the suit. *Held* by the Divisional Bench (Straight and Tyrrell, JJ.) that, with reference to the ruling of the Full Bench, the suit was maintainable. *Held* also by the Divisional Bench that, under the circumstances of the case, the plaintiff ought not to be granted the relief sought.—*Raghubar Dayal v. Bank of Upper India, Limited*, I. L. R., 5 All. 364. [Feb. 8, 1883.]

PER Straight, Oldfield, and Tyrrell, JJ.—That the words in s. 315 of the Civil Procedure Code, “no saleable interest,” mean “nothing to sell,” and are not intended to confine the cases in which a purchaser at an execution-sale shall be entitled to receive back his purchase-money to those in which the judgment-debtor, though having an interest, such interest is, by prohibition of law or for some other reason, unsaleable. *Held* by the Full Bench that a purchaser at a sale in execution of a decree can maintain a suit against the decree-holder for recovery of his purchase-money when it is found that the judgment-debtor had no saleable interest in the property sold, and he is not limited to the special procedure in the execution department mentioned in s. 315.—*Munna Singh v. Gajadhar Singh*, I. L. R., 5 All. 577. [May 7, 1883.]

UNDER s. 313 of the Code of Civil Procedure a purchaser at a sale in execution of a decree may resist the confirmation of the sale and prevent its conclusion, while under s. 315 he may apply, after the confirmation of the sale, for refund of the purchase-money on the ground that nothing passed by the sale. To entitle a purchaser, under para. 2 of s. 315 of the Code of Civil Procedure, to a refund of purchase-money, it is not necessary that a Court should have decided in other proceedings that the judgment-debtor had no saleable interest in the property which purported to be sold, or that the purchaser should have obtained actual possession and have been deprived thereof.—*Sivarama v. Rama*, I. L. R., 8 Mad. 99. [Nov. 20, 1884.]

UPON an application for refund of purchase-money under s. 315 of the Code of Civil Procedure, the Munsif, being of opinion that the purchaser had, in collusion with the judgment-debtor, run up the price of the land at auction far beyond its value with a view to prevent other property attached from being sold to satisfy the decree, rejected the application, except as to a sum of Rs. 50, which represented the alleged value of the judgment-debtor's interest in the land brought to sale by the decree-holder. *Held* that, as the judgment-debtor was found to have no interest in the land, the purchaser was entitled to a refund of the money paid to the decree-holder.—*Kunhi Moidin v. Tarayil Moidin*, I. L. R., 8 Mad. 101. [Nov. 20, 1884.]

WHERE an order was passed under s. 315 of the Code of Civil Procedure directing refund to a purchaser in execution of a decree in a suit in which a second appeal lay to the High Court, *held* that, under s. 622 of the Code of Civil Procedure, the High Court could set aside the order because, the judgment-debtor having been found to have a saleable interest, the Lower Court had no power to order a refund.—*Kuphamed v. Chathu*, I. L. R., 9 Mad. 437. [April 16, 1886.]

316. When a sale of immoveable property has become absolute in

Certificate to purchaser of manner aforesaid, the Court shall grant a certificate immoveable property. certificate stating the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear the date of the confirmation of the sale; and, so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold shall vest in the purchaser from the date of such certificate, and not before: Provided that the decree under which the sale took place was still subsisting at that date.

THE applicant purchased certain land at a Court-sale on the 17th February 1876. The sale was confirmed on the 20th March of the same year. The purchaser did not apply for a certificate of sale until the 10th March 1880. *Held* that the application was barred by the Limitation Act (XV. of 1877), sch. 2, art. 178. *Held* also that the purchaser's right to a certificate of sale accrued to him under ss. 256, 257, and 259 of the Civil Procedure Code (Act VIII. of 1859) on the 20th March 1876, when the sale was confirmed.—*In re Khaja Patthanji*, I. L. R., 5 Bom. 202. [Sep. 7, 1880.]

CERTAIN immoveable property was put up for sale, under the provisions of Act X. of 1877, in execution of a decree for money, and was purchased by C, with notice that L held a decree enforcing a lien on such property. Subsequently L applied for the sale of such property in execution of his decree, and such property was put up for sale in execution of that decree, and was purchased by S. S sued by virtue of such purchase, to recover possession of such property from C. Held that, inasmuch as under Act X. of 1877 what is sold in execution of a decree purports to be the specific property, and as C had purchased the property in suit with notice of the existing lien on it, and subject to its re-sale in execution of the decree in execution of which S had purchased it, what actually was sold in execution of that decree to S was such property, and S was entitled to possession of such property under such sale. Sales under Act VIII. of 1859 and Act X. of 1877 distinguished.—*Sheo Ratan Lal v. Chotey Lal*, I. L. R., 3 All. 647. [Mar. 26, 1881.]

A PERSON purchased certain property at a sale in execution of a decree in November 1878; his purchase was confirmed, and he obtained a certificate of sale on the 23rd May 1879, from which date he remained in possession. The judgment-debtor applied to have the sale set aside for irregularity but his application was dismissed both at the hearing and on the appeal. He had applied, before the sale took place, to stay the sale, on the ground that the right to apply for execution was barred. This application was dismissed, but was allowed on appeal. It did not appear that the auction-purchaser was a party to the proceeding, or that he was cognizant of the application. Two years from the date of the sale, and one and-a-half year from its confirmation, the judgment-debtor, on a summary application, obtained an order setting aside the sale, and putting the auction-purchaser out of possession. Held that the order was erroneous, the Subordinate Judge having no power, after the sale had been confirmed, to set aside the sale by a summary order; and that, under art. 165, sch. 2 of Act XV. of 1877, the application for such an order was barred. The words, "subsisting decree," in s. 316 of Act X. of 1877, as amended by Act XII. of 1879, mean a decree unreversed and in full force, and not merely one upon which execution cannot be issued.—In the Matter of the Petition of Mahomed Hossein v. Kokil Singh, I. L. R., 7 Cal. 91. [April 13, 1881.]

UNDER Act VIII. of 1859, s. 295, and Act XX. of 1866, ss. 17 and 42, it was necessary to register the certificate of sale itself, and not merely the memorandum of the certificate of sale.—*Srinivāsa Sāstri v. Sēshāyngar*, I. L. R., 3 Mad. 37. [April 29, 1881.]

CL. 178, sch. 2 of the Limitation Act (XV. of 1877), is not applicable to applications for certificates of sale. *Re Khaja Patthanjee* (I. L. R., 5 Bom. 202) dissented from. The provisions of the Indian Limitation Act (XV. of 1877) do not apply to applications to a Court to do what it has no discretion to refuse, nor to applications for the exercise of functions of a ministerial character. *Kylasa Goundan v. Ramasami Ayyan* (I. L. R., 4 Mad. 172) followed.—*Vithal Jamargan v. Vithojirāy*, I. L. R., 6 Bom. 586. [July 12, 1882.]

A PURCHASER of immoveable property at a Court-sale under the Civil Procedure Code (Act VIII. of 1859), who has been put into possession by the Court, has thereupon a complete title against all persons bound by the decree, notwithstanding that he has no certificate of sale, or one only which has not been registered. *Rajkishan Mookerjee v. Radha Madhab* (21 W. R. 349) followed. *Quære*—How far the above ruling will be affected by the language of s. 316 of Act XIV. of 1882?—*Shivāram Nārāyan v. Rāvji Sakhāram*, I. L. R., 7 Bom. 254. [Oct. 11, 1882.]

THE position of a purchaser at a sale in execution of a decree of the High Court after he has obtained a certificate from the Registrar under rule 415 of the Rules of Court is that of a person clothed with a right to a conveyance in virtue of a contract; he does not hold, save as regards the parties to the contract of sale, the position of an owner. When the sale is confirmed, the purchaser is entitled to a conveyance, and until he obtains a conveyance the property in the estate purchased does not, having regard to rule 431, pass to him so as to give him rights against parties not bound by the decree under which the sale took place. All that passes to him, as against the defendant in that suit, is an equitable estate and a right to a conveyance of the property. And, therefore, as the estate in the property purchased has not passed, the purchaser is not entitled to maintain a suit for partition. In such a suit he could not, on partition, give a good conveyance to the parties interested in the estate, nor would he be entitled to a declaration of his share in the property.—*Johur Mull Khoorba v. Tarankisto Deb*, I. L. R., 10 Cal. 252. [May 23, 1883.]

HELD that a sale-certificate granted under s. 316 of the Civil Procedure Code is not a document the registration of which is compulsory under the Registration Act, 1877, s. 17 (b).—*Masarat-un-nissu v. Adit Ram*, I. L. R., 5 All. 568. [May 31, 1883.]

A CREDITOR obtained a decree against his debtor, and applied for and obtained an order for execution. This application was unsuccessfully opposed by the judgment-debtor on the ground that execution was barred by limitation. Certain properties of the judgment-debtor were attached and sold in execution of this decree, the judgment-creditor himself becoming the purchaser. In due course, the sale was confirmed, and a certificate granted to the purchaser. Subsequently to this, the order granting execution came up before the High Court on appeal, and that Court decided that execution was barred. The person who had been the judgment-debtor then brought a regular suit against the purchaser to recover the properties sold in execution. *Held* that he was entitled to have the sale set aside by regular suit. *Jan Ali v. Jan Ali Chowdhry* (1 B. L. R., A. C., 56; 10 W. R. 154) distinguished.—*Minu Kumari Bibee v. Jagat Sattani Bibee*, I. L. R., 10 Cal. 220. [Sep. 6, 1883.]

WHERE land subject to an unregistered mortgage, the registration of which was optional, was attached and sold in execution of a money-decree obtained against the mortgagor, and the purchaser registered his certificate of sale and obtained possession of the land, *held* that no question of priority under s. 60 of the Registration Act could arise, inasmuch as the purchaser acquired only the right, title, and interest of the mortgagor subject to the mortgage.—*Rámárjā v. Arunáchala*, I. L. R., 7 Mad. 238. [Nov. 12, 1883.]

WHERE the interest of one of several joint tenants in a family dwelling-house and in certain lands let out on service-tenure is sold in execution, the purchaser is entitled to joint possession of the dwelling-house with the other shareholders, and also to a right to share in the service-rents. *Kōwar Bijoi Kesal Roy v. Samasundari* (B. L. R. Sup. Vol. 173; 2 W. R. Misc. 30) commented on.—*Rajanikanth Biswas v. Ram Nath Neogy*, I. L. R., 10 Cal. 244. [Nov. 23, 1883.]

THE provisions of s. 244 (c) of the Civil Procedure Code prohibit not only a suit between parties and their representatives, but also a suit by a party or his representatives against a purchaser at a sale in execution of the decree, the object of which is to determine a question which properly arises between the parties or their representatives, and relates to the execution, discharge, or satisfaction of the decree. A judgment-debtor, whose occupancy-tenure had been sold in execution of a decree for money, sued the purchaser for recovery of the property on the ground that the sale of occupancy-rights in execution of decree was illegal and void, being in contravention of the provisions of s. 9 of Act XII. of 1881 (N. W. P. Rent Act). *Held* by the Full Bench that the question involved in the suit was one of the nature referred to in s. 244 (c) of the Civil Procedure Code as determinable only by order of the Court executing the decree, and that the suit was, therefore, not maintainable. *Narain v. Pura* (Weekly Notes, 1883, p. 218) referred to.—*Basti Ram v. Fattu*, I. L. R., 8 All. 146. [Jan. 21, 1886.]

S. 273 of the Civil Procedure Code (Act X. of 1877) having expressly provided a mode for the attachment of decrees, the procedure laid down in s. 274 relating to immovable property has no application to the attachment of a decree for redemption. Under s. 316 of the Civil Procedure Code (Act X. of 1877) the title of a purchaser at a Court-sale becomes complete upon his payment of the purchase-money and confirmation of the sale by the Court. When the sale is admitted, production of a certificate is not necessary to prove that fact.—*Nuigar Timápa v. Bháskar Parmáya*, I. L. R., 10 Bom. 444. [Mar. 11, 1886.]

AT a Court-sale held on the 15th November 1871 in execution of a decree, the plaintiff's deceased husband purchased a house, but neglected to register his sale-certificate. In attempting to recover possession, he was obstructed by the defendant, who claimed the property as her own. Summary proceedings under s. 269 of Act VIII. of 1859 were thereupon instituted against the defendant, and the defendant's claim was upheld by an order passed on the 7th November 1872. In the meantime the plaintiff's husband having died, plaintiff filed, on the 31st March 1873, a regular suit to establish her title. On the 8th July 1873, she obtained a second certificate, and registered it. The Court of first instance awarded her claim, but on appeal by the defendant the lower Appellate Court reversed that decree, on the ground that, at the institution of the suit, plaintiff had not a registered certificate of sale. That decree was confirmed on the 17th November 1879, on second appeal, by the High Court. On the 30th April 1880, plaintiff brought this suit on the strength of her registered certificate. The Court of first instance allowed her claim. The defendant appealed, and the lower Appellate Court held her suit not maintainable. On appeal by plaintiff to the High Court, *held*, confirming the decree of the lower Appellate Court, that plaintiff's suit was barred. The Subordinate Judge having, by his order of the 7th November 1872, passed in the summary proceedings, disposed of the case on the ground that the property belonged to the defendant, the plaintiff was under an obligation to displace that order by a suit instituted within one year from its date.—*Bai Janná v. Bai Ichhá*, I. L. R., 10 Bom. 604. [April 20, 1886.]

317. No suit shall be maintained against the certified purchaser on the ground that the purchase was made on behalf of any other person, or on behalf of some one through whom such other person claims.

Nothing in this section shall bar a suit to obtain a declaration that the name of the certified purchaser was inserted in the certificate fraudulently or without the consent of the real purchaser.

IN a suit to obtain possession of certain property purchased at an execution-sale, the plaintiff who alleged that the purchase had been made for his benefit, and that the certified purchaser was his benámi, made the certified purchaser, who admitted his allegation, a defendant along with the person in possession. *Held* that the case came within the rule laid down in *Buhuns Koowar v. Lalla Bahoorie Lall* (14 Moore's I. A. 496; 10 B. L. R. 159), and that the suit was not barred by s. 317 of the Civil Procedure Code. — *Kazi Arjun Mullick v. Sheikh Farutulla*, 9 C. L. R. 295. [July 18, 1881.]

THE provisions of s. 317 of the Code of Civil Procedure are no bar to a suit for partition brought by a Hindu son against his father and a certified purchaser of family-property, who has bought benámi for the father with the family-funds at a sale in execution of a decree against the father. — *Natésa v. Venkataramáyyan*, I. L. R., 6 Mad. 135. [Nov. 2, 1882.]

A SUEE K, the purchaser of certain immoveable property sold in execution of a decree under Act VIII. of 1859, for a declaration that K had purchased such property on her behalf. The suit was instituted after Act VIII. of 1859 was repealed, and Act X. of 1877 came into force. When the suit was instituted, K did not hold a sale-certificate. After it was instituted, he applied for and obtained a sale-certificate under s. 317 of Act X. of 1877. *Held* that, when the suit was instituted, it was maintainable, as, the defendant not being a certified purchaser under s. 260 of Act VIII. of 1859, that section did not apply; and that, when the defendant obtained a certificate under s. 317 of Act X. of 1877, he became a certified purchaser, and the suit would only be maintainable if the plaintiff made out a case falling within the provisions of the last part of s. 317. — *Aldwell v. Ilahi Bakhsh*, I. L. R., 5 All. 478. [Feb. 5, 1883.]

IN a suit by A against B and C to recover land, A alleged that B bought the land at a Court-sale on his behalf. B did not contest the suit. C, who did not claim under B, pleaded that A could not recover by reason of the provisions of s. 317 of the Code of Civil Procedure. *Held* that s. 317 only enabled the certified purchaser and those claiming under him to avoid arrangements made with him in the nature of a trust, and was no bar to the suit. — *Ramakrishnappa v. Adinaráyana*, I. L. R., 8 Mad. 511. [July 6, 1885.]

CERTAIN property belonging to a judgment-debtor was brought to sale and purchased by a person in the benámi name of her daughter, then an infant; and the sale-certificate was made out in the name of the latter. Subsequently the mother mortgaged the property, and the mortgagee brought a suit, obtained a decree, and had the property sold, and purchased it himself. Upon his being resisted by the daughter in attempts to get his name registered as proprietor, he instituted a suit against both mother and daughter to establish his rights to the property. The daughter thereupon objected that the suit would not lie by reason of the provisions of s. 317 of the Civil Procedure Code. *Held* that the provisions of that section, which were intended to prevent fraud, were inapplicable to the facts of the case, and that the suit was maintainable. — *Kanizak Sukina v. Monohur Das*, I. L. R., 12 Cal. 204. [Aug. 18, 1885.]

318. When the property sold is in the occupancy of the judgment-debtor or of some person on his behalf, or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property, and a certificate in respect thereof has been granted under section 316, the Court shall, on application by the purchaser, order delivery to be made by putting the purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

A OBTAINED a money-decree against B on the 25th January 1872, in execution of which property belonging to B was sold on the 9th September 1874, A himself becoming the purchaser. The sale was confirmed on the 9th October 1874, but the certificate

of sale was not issued till the 23rd January 1878. A applied for possession on the 2nd April 1879. *Held* that the right to apply for possession contemplated in Act VIII. of 1859, ss. 263 and 264 (corresponding with Act X. of 1877, ss. 318 and 319), accrued on the date the certificate of sale was issued, and not on that on which the sale was confirmed, and that, therefore, the period of limitation under Act XV. of 1877, sch. 2, art. 178, against the purchaser, counted from the former date.—*Basápa v. Márya*, I. L. R., 3 Bom. 433. [July 14, 1879.]

CL. 178, sch. 2 of the Limitation Act (XV. of 1877), is not applicable to applications for certificates of sale. *Re Khaja Patthanjee* (I. L. R., 5 Bom. 202) dissented from. The provisions of the Indian Limitation Act (XV. of 1877) do not apply to applications to a Court to do what it has no discretion to refuse, nor to applications for the exercise of functions of a ministerial character. *Kylasa Goundan v. Ramasami Ayyan* (I. L. R., 4 Mad. 172) followed.—*Vithal Janardan v. Vithojiráv*, I. L. R., 6 Bom. 586. [July 12, 1882.]

S ATTACHED certain land and a house in execution of a decree against R. M put in a claim, under s. 278 of the Code of Civil Procedure, alleging that he was in possession as purchaser from R. The claim was rejected. No suit was brought by M to contest this order. S purchased the said land and house in execution, and obtained a sale-certificate. In 1884 S sued M to recover possession of the land and house, alleging that in execution-proceedings in 1882 he had been put into possession of the land, but not of the house, which was found, locked up by the Court amin, and that M prevented him from enjoying both the land and house. M pleaded that S had never been put into possession, and again set up his title as purchaser from R. and possession under such title. The Munsif found that S had been put into formal or constructive possession of the land, but not of the house, and decreed the claim. On appeal the District Judge held that S was bound to proceed according to the provisions of s. 335 of the Code of Civil Procedure to recover possession, and could not bring a separate suit. *Held* that, whether there had been legal delivery or not, the suit was not barred.—*Sevu v. Muttusámi*, I. L. R., 10 Mad. 53. [Sep. 11, 1886.]

319. When the property sold is in the occupancy of a tenant or other

Delivery of immoveable property in occupancy of tenant. person entitled to occupy the same, and a certificate in respect thereof has been granted under section 316, the Court shall order delivery thereof to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant, by beat of drum, or in such other mode as may be customary at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

A OBTAINED a money-decree against B on the 25th January 1872, in execution of which property belonging to B was sold on the 9th September 1874, A himself becoming the purchaser. The sale was confirmed on the 9th October 1874, but the certificate of sale was not issued till the 23rd January 1878. A applied for possession on the 2nd April 1879. *Held* that the right to apply for possession contemplated in Act VIII. of 1859, ss. 263 and 264 (corresponding with Act X. of 1877, ss. 318 and 319), accrued on the date the certificate of sale was issued, and not on that on which the sale was confirmed, and that, therefore, the period of limitation under Act XV. of 1877, sch. 2, art. 178, against the purchaser, counted from the former date.—*Basápa v. Márya*, I. L. R., 3 Bom. 433. [July 14, 1879.]

CL. 178, sch. 2 of the Limitation Act (XV. of 1877), is not applicable to applications for certificates of sale. *Re Khaja Patthanjee* (I. L. R., 5 Bom. 202) dissented from. The provisions of the Indian Limitation Act (XV. of 1877) do not apply to applications to a Court to do what it has no discretion to refuse, nor to applications for the exercise of functions of a ministerial character. *Kylasa Goundan v. Ramasami Ayyan* (I. L. R., 4 Mad. 172) followed.—*Vithal Janardan v. Vithojiráv*, I. L. R., 6 Bom. 586. [July 12, 1882.]

320. The Local Government may, with the sanction of the Governor-

General in Council, declare, by notification in the official Gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immoveable property to be sold, or the execution of any particular kind

of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immoveable property, shall be transferred to the Collector, and rescind or modify any such declaration.

The Local Government may also, notwithstanding anything hereinbefore contained, from time to time prescribe rules for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for re-transmitting the decree from the Collector to the Court.

HELD that a decree for the sale of ancestral land, or of an interest in such land, in enforcement of an hypothecation or such land, is a "decree for money" within the meaning of the rules prescribed by the Local Government under s. 320 of Act X. of 1877.—*Birch v. Rati Ram*, I. L. R., 4 All. 115. [Aug. 26, 1881.]

HELD that effect cannot be given to the rules prescribed by the Local Government under s. 320 of Act X. of 1877, unless an order for sale has been made on or after the 1st October 1880.—*Hafiz-un-nissa v. Mahadeo Prasad*, I. L. R., 4 All. 116. [Aug. 29, 1881.]

A SUBORDINATE Judge made an order for the sale, in execution of a decree, of certain immoveable property, which was "ancestral," within the meaning of the notification by the Local Government, No. 671, dated the 30th August 1880, under which execution of such decree should have been transferred to the Collector; and such property was sold accordingly. **Held** that the order for the sale of such property having been made without jurisdiction, the sale was void, and should be set aside.—*Sukhdeo Rai v. Sheo Ghulam*, I. L. R., 4 All. 382. [April 5, 1882.]

ORDERS passed by a Collector in the exercise of the powers conferred on him under s. 320 and the following sections of the Civil Procedure Code, relating to the execution of a decree of a Civil Court, after transfer of the decree to him under s. 320, are not appealable to the High Court. **Held**, therefore, that the order of a Collector, disallowing an application by the judgment-debtor that the amount of the decree might be satisfied by the temporary transfer of his immoveable property, and ordering the sale of such property, and the order of a Collector confirming a sale, were not appealable to the High Court.—*Madho Prasad v. Hansa Kuar*, I. L. R., 5 All. 314. [Feb. 24, 1883.]

A COLLECTOR, to whom a decree for sale of mortgaged property has been transferred for execution under s. 320 of the Civil Procedure Code, is limited to one of the three courses specified in s. 321, and may not depart from them; much less may he do what the Court itself could not do in such a case—allow payment of the debt to be made by instalments. A Collector, to whom a decree has been so transferred for execution, acts ministerially, and, when he delegates his functions to an assistant or a *mānātdār*, incurs a risk of having to answer in damages to the person who is, by any error or mistake, deprived of the fruits of his judgment; and this risk attaches independently of malice or negligence. The Court that has made a decree or judicial order, which has been transmitted to the Collector for execution, is not deprived of the judicial powers with respect to it which may still, at any particular time, be competent to such Court, and which it would have had, had the order been placed in the hands of its own ordinary officer, the *wāzir*. In the exercise of such powers the Court has authority to recall its own record transmitted to the Collector.—*Mahādāji Karandikar v. Hari D. Chikne*, I. L. R., 7 Bom. 332. [June 28, 1883.]

A DECREE passed by a Subordinate Judge upon a bond, in which certain immoveable property was mortgaged, was, in accordance with the rules made by the Local Government under s. 320 of the Civil Procedure Code, transferred to the Collector for execution. A sale in execution took place, and the Collector gave the purchaser a certificate of the sale. Upon this certificate the purchaser applied to the Subordinate Judge to give him possession of a larger amount of property than that specified in the certificate, and, upon the refusal of the Court to do so, applied to the Collector to amend the certificate. The amendment having been made as desired, the purchaser again applied to the Subordinate Judge for possession of the amount claimed by him, and the Subordinate Judge again rejected the application, holding that only the lesser amount had been sold in execution of the decree. **Held** that, with reference to the second paragraph of rule 19 of the Rules framed by the Local Government under s. 320 of the Civil Procedure Code, regarding the transmission, execution, and retransmission of decrees, and published in the N. W. P. and Oudh Gazette of the 4th September 1880, the matter of delivery to the purchaser was within the jurisdiction of the Subordinate Judge, notwithstanding the terms of s. 320, and notwithstanding the ruling of the Full Bench in *Madho Prasad v. Hansa*

Kaur (I. L. R., 5 All. 314). *Held* also that, inasmuch as the Subordinate Judge had jurisdiction to decide the question, and inasmuch as, even if his decision were wrong, the purchaser had a remedy by bringing a regular suit, the matter did not fall with s. 622 of the Civil Procedure Code, so as to call for the interference of the High Court in revision. **Shivanathaji v. Joma Kushinath (I. L. R., 7 Bom. 341)** and **Amir Hasan Khan v. Sheo Baksh Singh (I. L. R., 12 Cal. 6)** referred to.—**Sundar Das & Mansa Ram, I. L. R., 7 All. 407.** [Dec. 15, 1884.] • •

HELD that the ownership of alluvial land which had accreted to a riparian village must rest upon the same title as that upon which the original village was held, and that as the riparian village was ancestral, the accreted property must be ancestral also.—**Ram Prasad Rai v. Radha Prasad Singh, I. L. R., 7 All. 402.** [Feb. 27, 1885.]

Powers of Collector when execution of decree is so transferred.

321. When the execution of a decree has been so transferred, the Collector may—

- (a) proceed as the Court would proceed under section 305 ; or
- (b) raise the amount of the decree by letting it in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold ; or
- (c) sell the property ordered to be sold, or so much thereof as may be necessary.

322. When the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if, after such inquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided.

Notice to be given to decree-holders and to persons having claims on property.

322A. In the case mentioned in section 322, the Collector shall publish a notice calling upon—

(a) every person holding a decree for money against the judgment-debtor capable of execution by sale of his immoveable property, and which such decree-holder desires to have so executed, and every holder of a decree for money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder :

(b) every person having any claim on the said property, to submit to the Collector a statement of such claim, and to produce the documents (if any) by which it is evidenced.

Such notice shall be in the language of the district, and shall allow a period of sixty days from the date of its publication for compliance therewith. It shall be published by being posted in the Court-house of the Court which made the original order under section 304, and at such other places (if any) as the Collector thinks fit. Where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

322B. Upon the expiration of the said period, the Collector shall ap-

Amount of money decrees to be ascertained, and immoveable property available for their satisfaction.

point a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such inquiry as he may deem necessary for

informing himself as to the nature and extent of such decrees and claims and of the judgment debtor's immoveable property, and may, from time to time, adjourn such hearing and inquiry.

If there be no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

If any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order under section 304, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof be within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector. The Collector shall then draw up a statement as above provided in accordance with such decision.

AN appeal from the decision of a dispute under s. 322B of the Civil Procedure Code falls directly within the exception of art. 11, sch. 2 of the Court Fees Act (VII. of 1870), and the memorandum of appeal should therefore be presented as for a decree in a suit upon an *ad valorem* stamp. *Srinivasa Ayyangar v. Prida Tanbi Nayahar* (I. L. R., 4 Mad. 420) dissented from.—*Ahmad Khan v. Madho Das*, I. L. R., 7 All. 565. [Mar. 10, 1885.]

322C. The Collector may, instead of himself issuing the notices and holding the inquiry required by sections 322A and 322B, draw up a statement specifying the circumstances of the judgment-debtor and of his immoveable property, so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court; and such Court shall thereupon issue the notices, hold the inquiry, and draw up the statement required by sections 322A and 322B, and transmit such statement to the Collector.

322D. The decision by the Court of any dispute arising under section 322B or section 322C shall, as between the parties thereto, have the force of, and be appealable as, a decree.

Effect of decision of Court as to dispute arising under section 322B or 322C.

323. Whenever the amount to be recovered and the property available have been determined as provided in section 322B or 322C, the Collector may—

Scheme for liquidation of money-decrees.

(1) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property; or if it appears that the amount with interest (if any) in accordance with the decree and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale,

(2) raise such amount and interest (notwithstanding any order under section 304)

(a) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property; or

(b) by mortgaging the whole or any part of such property; or

(c) by selling part of such property; or

(d) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale; or

(e) partly by one of such modes, and partly by another or others of such modes.

(3) For the purpose of managing, under this section, the whole or any part of such property, the Collector may exercise all the powers of its owner.

(4) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable, or compound the claim of any incumbrancer whether it has become payable or not, and for the purpose of providing funds to effect such discharge or composition, may mortgage, let, or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this paragraph, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

In proceeding under paragraphs (2), (3), and (4) of this section, the Collector shall be subject to such rules, consistent with this Act, as may, from time to time, be made in this behalf by the Chief Controlling Revenue Authority.

A SMALL Cause Court may issue a warrant for the arrest of a person residing in another district, but not if he resides within the same district in which the Court is situate, but outside its local jurisdiction.—*Chunilál Subhārām v. Purbhudās Kusandās*, I. L. R., 2, Bom. 560. [Mar. 26, 1878.]

324. If, on the expiration of the letting or management under section 323, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks of the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and if, on the expiration of the said six weeks, the said balance is not so paid, the Collector shall sell such property or part accordingly.

324A. The Collector shall, from time to time, render to the Court which made the original order under section 304 an account of all moneys which come to his hands, and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this chapter, and shall hold the balance at the disposal of the Court.

Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and (if the Collector so directs) the expenses of witnesses summoned by him.

Such balance shall be applied by the Court as follows :—

Application of balance.
firstly, in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit; and

secondly, where the Collector has proceeded under section 321, in satisfaction of the original decree in execution of which the Court ordered the sale of immovable property, or otherwise as the Court may under section 295 direct; or

thirdly, where the Collector has proceeded under section 322, in keeping down the interest on incumbrances on the property, and (when the judgment-debtor has no other sufficient means of subsistence) in providing for his subsistence to such amount as the Court thinks fit and in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered:

and no other holder of a decree for money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied;

and the residue (if any) shall be paid to the judgment-debtor or such other person (if any) as the Court directs.

325. When the Collector sells any property under this chapter, he shall

Sales how to be conducted. put it up to public auction, in one or more lots as he thinks fit, and may—

(a) fix a reasonable reserved price for each lot;

(b) adjourn the sale for a reasonable time, whenever he deems the adjournment necessary for the purpose of obtaining a fair price for the property, recording his reasons for such adjournment;

(c) buy in the property offered for sale, and re-sell the same by public auction or private contract, as he thinks fit.

325A. So long as the Collector can exercise or perform in respect of the

Restrictions as to alienation by judgment-debtor or his representative, and prosecution of remedies by decree-holders.

judgment-debtor's immovable property, or any part thereof, any of the powers or duties conferred or imposed on him by sections 322 to 325 (both inclusive), the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease, or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for money.

During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under section 323.

The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this section in respect of any remedy of which the decree-holder has thereby been temporarily deprived.

325B. When the property of which the sale has been ordered is situate

Provision where property is in several districts.

in more districts than one, the powers and duties conferred and imposed on the Collector by sections 321 to 325 (both inclusive) shall, from time to time, be exercised and performed by such one of the Collectors of the said districts as the Local Government may, by general rule or special order, direct.

325C. In exercising the powers conferred on him by sections 322 to

Powers of Collector to compel attendance of parties and witnesses and production of documents.

325 (both inclusive), the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents.

326. When, in any local area in which no declaration under section

When Court may authorize Collector to stay public sale of land.

320 is in force, the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation or management of the land or share, the Court may authorize the Collector to provide for such satisfaction in the manner recommended by him, instead of proceeding to a sale of the land or share. In such case the provisions of sections 320, paragraph two, to 325C (both inclusive), shall apply, as far as they are applicable.

ACT X. of 1877, s. 326, does not apply to a decree which directs the sale of land or of a share in land in pursuance of a contract specifically affecting the same. The Court, therefore, cannot authorize the Collector to stay the sale in such a case under s. 326.—*Bhagwan Prasad v. Sheo Sahai*, 1. L. R., 2 All. 856. [April 23, 1880.]

WHERE the Collector has applied to the Court under s. 326 of the Civil Procedure Code, proposing a scheme for the payment of decretal money in order to avoid a sale of attached property, it is in the discretion of the Court to authorize the Collector or not, as it thinks fit, to provide for the satisfaction of the decree in the manner proposed; and the Court is bound to hear any objections which may be made by the decree-holder to the feasibility of the proposed scheme, and any evidence that may be offered in support of those objections; and if, after hearing the decree-holder's objections, and the evidence which may be offered in support of them, the Court is not fully satisfied that the proposal is feasible, or that it can, in all reasonable probability, be carried out within the specified period, the Court ought, in the exercise of its discretion, to refuse its sanction.—*Huro Prosad Roy v. Kali Prosad Roy*, 1. L. R., 9 Cal. 290. [July 13, 1882.]

327. The Local Government may, from time to time, with the sanction

Local rules as to sales of land in execution of decrees for money.

of the Governor-General in Council, make special rules for any local area, imposing conditions in respect of sale of any class of interests in land in execution of decrees for money, where such interests are so uncertain or undetermined as in the opinion of the Local Government to make it impossible to fix their value;

and if, when this Code comes into operation in any local area, any special rules as to sale of land in execution of decrees are in force therein, the Local Government may continue such rules in force, or may, from time to time, with the sanction of the Governor-General in Council, modify the same.

All rules so made or continued, and all such modifications of the same, shall be published in the local official Gazette, and shall thereupon have the force of law.

*II.—Of Resistance to Execution.***328.** If, in the execution of a decree for the possession of property, the

Procedure in case of obstruction to execution of decrees.

officer charged with the execution of the warrant is resisted or obstructed by any person, the decree-holder may complain to the Court at any time within one month from the time of such resistance or obstruction.

The Court shall fix a day for investigating the complaint, and shall summon the party against whom the complaint is made to answer the same.

WHERE a warrant for possession of land in execution of a decree was not executed owing to the resistance of the judgment-debtors in September 1880, and no complaint was made under s. 328 of the Code of Civil Procedure, 1877, but a fresh warrant for possession was applied for by and granted to the decree-holders, and resistance was again made in January 1881, held that a complaint by the decree-holders as to the second obstruction made within thirty days of the second obstruction was not barred by reason of art. 167 of sch. 2 of the Limitation Act.—*Rámasekara Pillai v. Dharmaraya Goundan*, 1. L. R., 5 Mad. 113. [Oct. 4, 1881.]

Extending to Provincial S. C. Courts (so far as relates to moveable property).

S. 328 of the Civil Procedure Code (Act XIV. of 1882) does not make it obligatory on a decree-holder, who is obstructed in execution of the decree, to pursue his remedies under that section. Accordingly, the failure on the part of the plaintiff to avail himself of the remedy under that section did not prevent him from proceeding against the defendant by a regular suit.—*Bulvant Saptarām v. Bābājī*, 1 L. R., 8 Bom. 602. [July 12, 1884.]

329. If the Court is satisfied that the obstruction or resistance was occasioned by the judgment-debtor, or by some person at his instigation, the Court shall inquire into the matter of the complaint, and pass such order as it thinks fit. Extending to Provincial S. C. Courts (so far as relates to moveable property).

Procedure in case of obstruction by judgment-debtor or at his instigation.

THE power given by s. 329 of the Civil Procedure Code to make such order as the Court shall see fit must be construed with regard to the circumstances in respect of which the power is to be exercised. An order under s. 329 should be the result of the fact that the defendant in the suit, who is precluded by the decree from disputing plaintiff's right, unjustly instigates a third party, who has no real interest in the property, to prevent the plaintiff from getting the benefit of his execution. A Court has no power under this section to determine, as between a judgment-creditor and a third party obstructing the execution of the decree, important questions on the merits which are wholly unconnected with, and cannot be affected by, the fact that the obstruction is made at the instigation of the defendant.—*Govipda Nair v. Késava*, 1 L. R., 3 Mad. 81. [Oct. 27, 1880.]

330. If the Court is satisfied that the resistance or obstruction was without any just cause, and that the complainant is still resisted or obstructed in obtaining possession of the property by the judgment-debtor or some other person at his instigation, the Court may, at the instance of the decree-holder, and without prejudice to any penalty to which such judgment-debtor or other person may be liable under the Indian Penal Code or any other law for such resistance or obstruction, commit the judgment-debtor or such other person to jail for a term which may extend to thirty days, and direct that the decree-holder be put into the possession of the property. Ditto.

331. If the resistance or obstruction has been occasioned by any person other than the judgment-debtor claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the claim shall be numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant; Ditto.

Procedure in case of obstruction by claimant in good faith, other than judgment-debtor.

and the Court shall, without prejudice to any proceedings to which the claimant may be liable under the Indian Penal Code or any other law for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of Chapter V.,

and shall pass such order as it thinks fit for executing or staying execution of the decree.

Every such order shall have the same force as a decree, and shall be subject to the same conditions as to appeal or otherwise.

THE plaintiff obtained a decree against T, A, and J in a suit, the subject-matter of which exceeded Rs. 5,000, and, in part-execution thereof, attached property worth less than that amount. D having resisted the execution of the decree, the plaintiff's claim was numbered and registered as a suit under s. 229 of Act VIII. of 1859. Upon investigation the First-class Subordinate Judge made an order staying execution of the decree. The plaintiff appealed to the District Judge, who held that no appeal lay to him, as the subject-matter of the original suit, out of which the execution-suit arose, exceeded Rs. 5,000. The plaintiff appealed against this decision to the High Court. Held that the investigation of

a claim under s. 229 of Act VIII. of 1859 is not to be regarded as a fresh suit, but is merely a continuation of the original suit, and that there was, therefore, no appeal against the order in question to the District Judge.—*Ravloji Tamaji v. Dhalapa Raghau*, I. L. R., 4 Bom. 123. [Oct. 6, 1879.]

THE power given by s. 329 of the Civil Procedure Code to make such order as the Court shall see fit must be construed with regard to the circumstances in respect of which the power is to be exercised. An order under s. 329 should be the result of the fact that the defendant in the suit, who is precluded by the decree from disputing plaintiff's right, unjustly instigates a third party, who has no real interest in the property, to prevent the plaintiff from getting the benefit of his execution. A Court has no power under this section to determine, as between a judgment-creditor and a third party obstructing the execution of the decree, important questions on the merits which are wholly unconnected with, and cannot be affected by, the fact that the obstruction is made at the instigation of the defendant.—*Govinda Nair v. Kesava*, I. L. R., 3 Mad. 81. [Oct. 27, 1880.]

AN investigation under s. 331 of the Civil Procedure Code (prior to the Amendment Act of 1879) is limited to the fact of possession, and is no bar to a subsequent suit brought to try the title to the land in dispute.—*Chinnasami Pillai v. Krishna Pillai*, I. L. R., 3 Mad. 104. [Jan. 25, 1881.]

APPEALS from orders under s. 331 of Act X. of 1877, as amended by s. 52 of Act XII. of 1879, are chargeable with the same court-fee as is required in the case of appeals from decrees.—*Mahbubani and others v. Umrao Begum and others*; *Shayama Sunduri Dasi v. Robert Watson and Co.*, I. L. R., 8 Cal. 720. [April 7, 1882.]

IN a suit under s. 229 of Act VIII. of 1859 (s. 331 of Acts X. of 1877 and XIV. of 1882), the *onus* is on the plaintiff to establish a *prima facie* case of possession, and it is then incumbent on the defendant to answer that case, and show, if possible, a better title.—*Rakhal Churn Mundul v. Watson & Co.*, I. L. R., 10 Cal. 50. [July 3, 1883.]

A COURT executing a decree obtains, by virtue of s. 331 of the Code of Civil Procedure, a special jurisdiction which enables it to try a claim, of which the value of the subject-matter falls below the pecuniary limit of its ordinary jurisdiction. By virtue of s. 647 of the Code of Civil Procedure, a superior Court may, for sufficient cause, transfer a claim, registered under s. 331, to a Subordinate Court for trial.—*Sithalakshmi v. Vythilinga*, I. L. R., 8 Mad. 549. [Nov. 25 1884.]

IN a suit for partition a compromise was entered into by all the parties except S, and a decree obtained on the terms thereof. In execution S was dispossessed, and presented a petition to the Court, objecting that the decree was not binding on her. The petition was rejected. *Held* that the objection raised by S ought to have been investigated under s. 244 of the Code of Civil Procedure, and that S was entitled to appeal against the order rejecting the petition.—*Sankaravammal v. Kumarasamy*, I. L. R., 8 Mad. 473. [April 25 1885.]

Extending to
Provincial S.
C. Courts
(so far as
relates to
moveable
property).

332. If any person other than the judgment-debtor is dispossessed of

any property in execution of a decree, and such person disputes the right of the decree holder to dispossess him of such property under the decree, on the ground that the property was *bona fide* in his possession on his own account or on account of some person other than the judgment-debtor, and that it was not comprised in the decree, or that, if it was comprised in the decree, he was not a party to the suit in which the decree was passed, he may apply to the Court.

If, after examining the applicant, it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute; and if it finds that the ground mentioned in the first paragraph of this section exists, it shall make an order that the applicant recover possession of the property, and if it does not find as aforesaid, it shall dismiss the application.

In hearing applications under this section, the Court shall confine itself to the grounds of dispute above specified.

The party against whom an order is passed under this section may institute a suit to establish the right which he claims to the present possession of the property ; but, subject to the result of such suit (if any), the order shall be final.

A MORTGAGEE who is in possession of the mortgaged property under the mortgage is in possession "on his own account" within the meaning of Act VIII. of 1859, s. 230, and Act X. of 1877, s. 332. A person claiming under Act X. of 1877, s. 332, need not prove his title, but only the fact of possession.—*Shafi-ud-din v. Lochan Singh*, I. L. R., 2 All. 94. [Dec. 16, 1878.]

WHERE, in pursuance of an order made in the execution of a decree while Act VIII. of 1859 was in force, certain persons were dispossessed of certain property, and that Act was repealed and Act X. of 1877 came into force, and such persons applied under Act X. of 1877, s. 332, to be restored to the possession of such property on certain of the grounds specified in that section, *held* that such persons were entitled to the benefit of that section.—*Shafi-ud-din v. Lochan Singh*, I. L. R., 2 All. 94. [Dec. 16, 1878.]

WHEN a person making a claim to certain property under s. 230 of Act VIII. of 1859 has been allowed to bring a suit under that section to try his right to the property, it is sufficient, in the first instance, for him to prove his possession, without proof of his title ; but if he takes this course, it is open to the defendant to show that although possession may be in the plaintiff, yet he has no good title to the property, and that he (the defendant) has a better title.—*Dilbassee Koonwaree Mothee v. Gunga Pershad*, I. L. R., 5 Cal. 278. [Mar. 31, 1879.]

AN investigation under s. 331 of the Civil Procedure Code (prior to the Amendment Act of 1879) is limited to the fact of possession, and is no bar to a subsequent suit brought to try the title to the land in dispute.—*Chinnasami Pillai v. Krishna Pillai*, I. L. R., 3 Mad. 104. [Jan. 25, 1881.]

WHERE an application was made under s. 332 of the Code of Civil Procedure for possession of property and rejected, and the applicant brought a suit to recover the property more than one year subsequent to the order rejecting the application, *held* that the suit was not barred either by art. 11 or art. 13 of sch. 2 of the Indian Limitation Act, 1877.—*Ayyasami v. Samiya*, I. L. R., 8 Mad. 82. [July 30, 1884.]

IN a suit for partition a compromise was entered into by all the parties except S, and a decree obtained on the terms thereof. In execution S was dispossessed, and presented a petition to the Court, objecting that the decree was not binding on her. The petition was rejected. *Held* that the objection raised by S ought to have been investigated under s. 244 of the Code of Civil Procedure, and that S was entitled to appeal against the order rejecting the petition.—*Sankaravammal v. Kumarsami*, I. L. R., 8 Mad. 473. [April 25, 1886.]

Transfer of property by judgment-debtor after institution of suit.

333. Nothing in section 331 or 332 applies to a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree is made.

Extending to Provincial S. C. Courts (so far as relates to moveable property).

334. If the purchaser of any immoveable property sold in execution of a decree be resisted or obstructed by the judgment-debtor or any one on his behalf in obtaining possession of the property, the provisions of this chapter relating to resistance or obstruction to a decree-holder in obtaining possession of the property adjudged to him shall be applicable.

A PURCHASER of immoveable property at a Court-sale, having been obstructed by the defendant, made an application to the Court, under s. 268 of Act VIII. of 1859, for the removal of the obstruction, but subsequently withdrew his application. The Court thereupon made an endorsement upon the application to the effect that as the applicant did not wish to proceed further, no investigation was made. *Held* that no such order had been made as was contemplated by s. 268 of Act VIII. of 1859, that section contemplating, at least, an order against one party or the other ; and that, therefore, the provisions contained in the same section, as to the time within which a suit must be brought, did not apply to the case of the plaintiff.—*Bhikhá v. Sákárlál*, I. L. R., 5 Bom. 440. [Mar. 22, 1881.]

335. If the purchaser of any such property is resisted or obstructed by

Obstruction by claimant any person other than the judgment-debtor claiming other than judgment-debtor. in good faith a right to the present possession thereof, or if, in delivering possession thereof, any such person is dispossessed, the Court, on the complaint of the purchaser or the person so dispossessed, shall inquire into the matter of the resistance, obstruction, or dispossession, as the case may be, and pass such order thereon as it thinks fit.

The party against whom such order is passed may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit (if any), the order shall be final.

WHEN the defendant is in possession by virtue of an order under s. 269 of Act VIII. of 1859, the plaintiff can only succeed on the strength of his own title. *K and R*, two out of five undivided Hindu brothers, sued *V* (a purchaser at an execution-sale of the interest of one of the brothers other than *K* and *R*) for the recovery of certain land of which *V* had obtained possession under s. 269 of Act VIII. of 1859. The lower Courts awarded two-fifths of the land to *K* and *R* as being the amount of their share in the land. Held by the High Court that the decree could not be maintained, as *K* and *R*, being two of several co-parceners in undivided property, could not say that they were entitled to a specific share in any portion of that property. They might have sued for general partition, or for a decree declaring them entitled to joint possession with *V*. *Babaji v. Vasudeo* (I. L. R., 1 Bom. 95) followed. A purchaser at a Court's sale ought not to be put in exclusive possession of the whole undivided land by virtue of a decree against one co-parcener only.—*Kallapa bin Girmallapa v. Venkatesh Vinayak*, I. L. R., 2 Bom. 676, [April 24, 1878.]

AN order under s. 335 of the Civil Procedure Code is subject to revision by the High Court under s. 622 of that Code. *Shiva Nathaji v. Joma Kashinath* (I. L. R., 7 Bom. 340) followed.—*Sheoraj Singh v. Baiwari Das*, I. L. R., 6 All. 172. [Jan. 28, 1884.]

IN 1870 *B* mortgaged to *N* with possession a certain piece of land. On 17th June 1871, *M* and *T* obtained a money-decree against *B*. On 9th March 1872, the defendants bought from *B* his equity of redemption. In July 1872, *M* and *T* attached the land in execution of the decree. The defendants objected to the attachment under s. 246 of the Civil Procedure Code (Act VIII. of 1859), but on investigation of their claim an order was made, disallowing their claim, on the 23rd December 1872. In June 1873, the defendants paid off the mortgage-debt, and were put into possession by the mortgagee. In October 1873, *M* and *T* put up the land for sale in execution of their decree, and the plaintiff became the purchaser. On seeking to obtain possession, the plaintiff was resisted by the defendants, whose claim was allowed by the Subordinate Judge after inquiry. The plaintiff, therefore, brought this suit under s. 335 of the Civil Procedure Code (Act XIV. of 1882). The lower Courts rejected his claim. On appeal to the High Court, held that where, under s. 246 of the Civil Procedure Code (Act VIII. of 1859), or the corresponding sections (278 to 283) of the Civil Procedure Codes of 1877 and 1882, an order has been passed against any person making a claim to property under attachment, such person may bring a suit to establish his title to the property within one year from the date of such order, but, in default of his bringing such suit within the prescribed time, he is precluded from asserting his title against the auction-purchaser, whether as plaintiff or defendant. In the present case an order had been passed against the defendants under s. 246 of the Civil Procedure Code, 1859, on the 23rd December 1872; and as they had brought no suit within a year from that date, they could not now contest the plaintiff's title to the property. The defendants, however, having, since the date of the said order, paid off the mortgage, held that it would be contrary to justice, equity, and good conscience for the Court to assist the plaintiff in obtaining possession, unless he paid the defendants the amount paid by them to the mortgagee to free the property from the incumbrance.—*Nilo Pandurang v. Rama Patloji*, I. L. R., 9 Bom. 35. [July 31 1884.]

AN order having been passed on the 10th August 1877 under s. 269 of the Code of Civil Procedure, 1859, cancelling delivery of possession of land brought to sale, and purchased by a decree-holder, no suit was brought by the decree-holder to establish his rights to the land until 1883. Held that the repeal of s. 269 of the said Code on 1st October 1877 did not deprive the order of the 10th August 1877 of the effect it possessed when passed, and therefore that the suit was barred by limitation. *Koylash Chunder Paul Chowdhry v. Preonath Roy Chowdhry* (I. L. R., 4 Cal 610) and *Gopal Chunder Mitter v. Mohesh Chunder Boral* (I. L. R., 9 Cal. 230) distinguished.—*Venkatachala v. Appathorai*, I. L. R., 8 Mad. 134. [Nov. 11, 1884.]

§ ATTACHED certain land and a house in execution of a decree against R. M put in a claim under s. 278 of the Code of Civil Procedure, alleging that he was in possession as purchaser from R. The claim was rejected. No suit was brought by M to contest this order. S purchased the said land and house in execution, and obtained a sale-certificate. In 1884 S sued M to recover possession of the land and house, alleging that in execution-proceedings in 1882 he had been put into possession of the land, but not of the house, which was found locked up by the Court amin, and that M prevented him from enjoying both the land and house. M pleaded that S had never been put into possession, and again set up his title as purchaser from R and possession under such title. The Munsif found that S had been put into formal or constructive possession of the land, but not of the house, and decreed the claim. On appeal the District Judge held that S was bound to proceed according to the provisions of s. 335 of the Code of Civil Procedure to recover possession, and could not bring a separate suit. Held that, whether there had been legal delivery or not, the suit was not barred.—*Sevu v. Muttusami*, 1. L. R., 10 Madras. [Sept. 11, 1886.]

I.—Of Arrest and Imprisonment.

336. A judgment-debtor may be arrested in execution of a decree at Extending to
Provincial S.
C. Courts.

any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his imprisonment may be in the civil jail of the district in which the Court ordering the imprisonment is situate, or, when such jail does not afford suitable accommodation, in any other place which the Local Government may appoint for the confinement of persons ordered by the Courts of such district to be imprisoned :

Provided as follows :—

(a) for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset or before sunrise, and no outer door of a dwelling house shall be broken open. But, when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe the judgment-debtor is to be found : Provided that, if the room be in the actual occupancy of a woman who is not the judgment-debtor, and who, according to the customs of the country, does not appear in public, the officer shall give notice to her that she is at liberty to withdraw ; and, after allowing a reasonable time for her to withdraw, and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of making the arrest :

(b) when the decree in execution of which a judgment-debtor is arrested is a decree for money, and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

The Local Government may, by notification published in the official Gazette, direct that, whenever a judgment-debtor is arrested in execution of a decree for money, and brought before the Court under this section, the Court shall inform him that he may apply under Chapter XX. to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of his application, and if he places all his property in possession of a receiver appointed by the Court.

If, after such publication, the judgment-debtor express his intention so to apply, and if he furnish sufficient security that he will appear when called upon, and that he will, within one month, apply under section 344 to be declared an insolvent, the Court shall release him from arrest :

But if he fails so to apply, the Court may either direct the security to be realized, or commit him to jail in execution of the decree.

In the case of a surety such security may be realized in manner provided by section 253.

ACT X. of 1877, s. 336, cl. 5, applies to Small Cause Court debtors, and such persons can obtain the benefit of chap. 20 of that Act by applying to a Court which has jurisdiction under that chapter.—*Syed Moidin v. Sundaramuthia*, I. L. R., 2 Mad. 9. [Sep. 20, 1878.]

It is not necessary that a special order of Court should be made, empowering an officer authorized to arrest a parda-nashin lady to enter the zanáná of the house in which she resides. Under s. 336 of the Civil Procedure Code, if the officer is able to enter the house, he may break into any room in the house, including the zanáná, in order to effect the arrest.—*Kadumbineé Dossee (S. M.) v. Koylashkaminee Dossee (S. M.)*, I. L. R., 7 Cal. 19. [Mar. 21, 1881.]

WARRANT of arrest directed, notwithstanding previous proceedings in attachment, the Court being satisfied that the judgment-debtor was determined to evade, if possible, the payment of his debt.—*Chena Pemáji v. Ghelábhái Nárándás*, I. L. R., 7 Bom. 301. [Jan. 29, 1883.]

A JUDGMENT-DEBTOR, having been arrested in execution of a decree of the High Court in its original civil jurisdiction, and brought before the Court under the provisions of s. 336 of the Code of Civil Procedure, claimed to be discharged on the ground that he intended to apply to the Court to be declared an insolvent either under the provisions of chap. 20 of the Code or of 11 & 12 Vic., c. 21. Held that the judgment-debtor, on expressing his intention to file a petition and schedule under 11 & 12 Vic., c. 21, and complying with the conditions of s. 336 of the Code of Civil Procedure, was entitled to be discharged.—*Ex parte Pinsent*, I. L. R., 8 Mad. 276. [Feb. 6, 1885.]

A SHERIFF's officer, of his own motion, delivered over to the officer in charge of the Alipore Jail, a judgment-debtor who had been duly committed to the Presidency Jail. Held that the imprisonment was unlawful; that the delivery over to the officer in charge of the Alipore Jail amounted to a release; and that the prisoner was entitled, therefore, to be discharged.—*Shamsoneesa Begum v. Anne Love*, I. L. R., 11 Cal. 527. [May 7, 1885.]

SS. 336 and 349 of the Code of Civil Procedure, 1882, are applicable to judgment-debtors under arrest, but not committed to jail. A judgment-debtor committed to jail can only be discharged under s. 341.—*In re Quarrie*, I. L. R., 8 Mad. 503. [July 10, 1885.]

MARRIED women, against whom personal decrees for debt have been made, are not exempt from arrest or imprisonment in execution of such decrees under the Code of Civil Procedure.—*Lakshmana v. Kullamma*, I. L. R., 9 Mad. 99. [Oct. 23, 1885.]

Extending to
Provincial S.
C. Courts.

337. Every warrant for the arrest of the judgment-debtor shall direct the officer entrusted with its execution to bring judgment-debtor to be brought him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid.

A SHERIFF's officer, of his own motion, delivered over to the officer in charge of the Alipore Jail, a judgment-debtor who had been duly committed to the Presidency Jail. Held that the imprisonment was unlawful; that the delivery over to the officer in charge of the Alipore Jail amounted to a release; and that the prisoner was entitled therefore to be discharged.—*Shamsoneesa Begum v. Anne Love*, I. L. R., 11 Cal. 527. [May 7, 1885.]

Ditto.

338. The Local Government may, from time to time, prescribe scales, graduated according to rank, race, and nationality, of monthly allowance payable for the subsistence of judgment-debtors.

Ditto.

339. No judgment-debtor shall be arrested in execution of a decree, unless and until the decree-holder pays into Court such sum as, having regard to the scales so fixed, the Judge thinks sufficient for the subsistence of the judgment-debtor from his arrest until he can be brought before the Court.

When a judgment-debtor is committed to jail in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the said scales, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

The monthly allowance fixed by the Court shall be supplied by the party on whose application the decree has been executed by monthly payments in advance before the first day of each month.

The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to jail, and the subsequent payments (if any) shall be made to the officer in charge of the jail.

340. Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in jail shall be deemed to be costs Extending to Provincial S. C. Courts.
 Subsistence-money to be judgment-debtor in jail shall be deemed to be costs in the suit :
 costs in suit.

Provided that the judgment-debtor shall not be detained in jail or arrested on account of any sum so disbursed.

341. The judgment-debtor shall be discharged Ditto.
 Release of judgment-debtor. from jail

(a) on the amount mentioned in the warrant of committal being paid to the officer in charge of the jail ; or

(b) on the decree being otherwise fully satisfied ; or

(c) at the request of the person on whose application he has been imprisoned ; or

(d) on such person omitting to pay the allowance as hereinbefore directed ; or

(e) if the judgment-debtor be declared an insolvent, as, hereinafter provided ; or

(f) when the term of his imprisonment, as limited by section 342, is fulfilled :

Provided that, in the second, third, and fifth cases mentioned in this section, the judgment-debtor shall not be discharged without the order of the Court.

A judgment-debtor discharged under this section is not thereby discharged from his debt ; but he cannot be re-arrested under the decree in execution of which he was imprisoned.

THE decree in an administration-suit directed A, a party to the suit, to pay over a sum of money, which she admitted was in her hands, to her own attorney in the suit, to be applied by him as directed by the decree. A refused to pay over the money, and she was imprisoned for disobedience to the Court's order. After she had been in prison for six months, she applied to the Judge of the Court below, under Act X. of 1877, s. 341, to be discharged. This order was refused. *Per* appeal, that the proceeding under which A had been imprisoned was not in execution of a decree, but that she was imprisoned under process of contempt, and that the provisions of ss. 341 and 342 did not apply to the case.—*Martin v. Lawrence*, I. L. R., 4 Cal. 655. [Jan. 13, 1879.]

IN the execution of a decree payable by instalment the judgment-debtor cannot be arrested and imprisoned separately for default in the payment of each instalment.—*Damodar Shaligram v. Malhari*, I. L. R., 7 Bom. 106. [Sep. 7, 1882.]

THE discharge of a judgment-debtor before imprisonment on account of the non-payment of the subsistence-money for the debtor is no bar to the debtor being re-arrested.—*Subba v. Venkata*, I. L. R., 8 Mad. 21. [Oct. 16, 1884.]

WHERE the warrant of committal to jail has been made out, the discharge of the defendant whilst in confinement in the Court-house, for non-payment of the instalment of subsistence allowance, is a discharge from jail within the meaning of s. 341 of the Code of Civil Procedure (Act XIV. of 1882).—*Timapa Shanbhog v. Maneshvar Kashi*, I. L. R., 9 Bom. 181. [Nov. 28, 1884.]

SS. 336 and 349 of the Code of Civil Procedure, 1882, are applicable to judgment-debtors under arrest, but not committed to jail. A judgment-debtor committed to jail can only be discharged under s. 341.—*In re Quarrie*, I. L. R., 8 Mad. 503. [July 10, 1885.]

A JUDGMENT-DEBTOR once arrested and imprisoned in execution of a decree cannot, under the Civil Procedure Code, be again arrested under a fresh writ of attachment on the same decree.—*Secretary of State for India in Council v. Judah*, I. L. R., 12 Cal. 652. [April 1, 1886.]

Extending to
Provincial S.
C. Courts.

342. No person shall be imprisoned in execution of a decree for a longer period than six months ;

or for a longer period than six weeks if the decree be for the payment of a sum of money not exceeding fifty rupees.

HELD by a majority of the Full Bench (Sargeant and Bayley, JJ., dissenting) that a judgment-debtor, imprisoned in satisfaction of the decree against him under Act VIII. of 1859, is not entitled, under Act X. of 1877, to be released on the coming into operation of the latter Act, if he have then been imprisoned for more than six months but less than two years.—*In the Matter of the Petition of Ratansi Kaliánji*, I. L. R., 2 Bom. 148. [Oct. 13, 1877.]

THE decree in an administration-suit directed A, a party to the suit, to pay over a sum of money, which she admitted was in her hands, to her own attorney in the suit, to be applied by him as directed by the decree. A refused to pay over the money, and she was imprisoned for disobedience to the Court's order. After she had been in prison for six months, she applied to the Judge of the Court below, under Act X. of 1877, s. 341, to be discharged. This order was refused. *Held*, on appeal, that the proceeding under which A had been imprisoned was not in execution of a decree, but that she was imprisoned under process of contempt, and that the provisions of ss. 341 and 342 did not apply to the case.—*Martin v. Lawrence*, I. L. R., 4 Cal. 655. [Jan. 13, 1879.]

THE defendant was arrested before judgment, and, on the 5th February 1883, committed to jail under s. 481 of the Civil Procedure Code. On the 6th March following, a decree in the suit was passed against him. On the 28th July, the defendant being then still in jail under the order of the 5th February, the plaintiff took out a fresh warrant of arrest in execution of the decree, and sought to have the defendant further imprisoned for the full period of six months limited by s. 342 of the Code. *Held* that the defendant could be re-committed to jail, in execution of the decree, only for such a period as, together with the period of imprisonment that had elapsed since the passing of the decree, would complete a period of six months, and that, consequently, he would be entitled to be liberated on the 5th September 1883. Imprisonment under s. 581 becomes, after decree, imprisonment in execution of the decree, and the imprisonment suffered after that date must consequently be taken into consideration in calculating the period of six months, which, by s. 342 of the Code, is the limit allowed for an imprisonment in execution of a decree.—*Ghanashamdás Goorsamull v. Johárinull Kedárináth*, I. L. R., 7 Bom. 431. [Aug. 31, 1883.]

Ditto.

343. The officer entrusted with the execution of the warrant shall endorse thereupon the day on which it was executed, and, if the latest day specified in the warrant for the return thereof has been exceeded, the reason of the delay, or if it was not executed, the reason why it was not executed, and shall return the warrant with such endorsement to the Court.

If the endorsement is to the effect that such officer is unable to execute the warrant, the Court shall examine him on oath touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

WHERE a warrant issued by a Subordinate Court, directing the nazir to arrest a judgment-debtor in execution of a decree, was entrusted by the nazir to a subordinate for execution by endorsing his name upon it, *held* that there is nothing in the Civil Procedure Code to prohibit a nazir from authorizing a deputy to execute a warrant of arrest for him, and that his endorsement must be regarded as *prima facie* evidence of the authority of the person to whom the warrant is delivered to execute it. *Held* that it is most desirable,

when the nazirs of the Subordinate Courts delegate the duty of executing warrants of arrest, that they should confer the authority in more clear and explicit terms than are expressed by a mere indorsement, and that they should be careful in selecting proper persons to discharge that duty, bearing in mind, as far as circumstances permit, the position and caste of the party to be arrested, so as to avoid, through the medium of Court-process, subjecting any such party to personal indignity or offence. Further, that it is important that the person chosen should be made acquainted with the contents of the warrant, in order that he may be able to inform the judgment-debtor at whose suit and for what amount he is being taken into custody. Where a warrant for the arrest of the judgment-debtor had been executed, and an indorsement thereon, professedly under s. 843 of the Civil Procedure Code, was irregularly made by the nabî nazir, he not having been "the officer entrusted with the execution of the warrant," held that such irregularity did not invalidate the arrest.—*Abdul Karim v. Bullen (J.)*, I. L. R., 6 All. 385. [May 21, 1884.]

CHAPTER XX.

OF INSOLVENT JUDGMENT-DEBTORS.

344. Any judgment-debtor arrested or imprisoned in execution of a decree for money, or against whose property an order of attachment has been made in execution of such a decree, may apply in writing to be declared an insolvent.

Any holder of a decree for money may apply in writing that the judgment-debtor may be declared an insolvent.

Every such application shall be made to the District Court within the local limits of whose jurisdiction the judgment debtor, resides or is in custody.

THE Deputy Commissioner of Akyab, sitting as District Judge, has power to entertain applications under Act X. of 1877, chap. 20. S. 6 (d) of that Act interposes no obstacle in the way of his dealing with such applications, nor does the exercise of such power in any way "affect the jurisdiction of the Recorder of Rangoon sitting as an Insolvent Court in Akyab" within the meaning of that section.—*In re Abdul Hamed*, I. L. R., 4 Cal. 94. [June 20, 1878.]

THE effect of Act X. of 1877, s. 5, coupled with sch. 2, is to render the whole of chap. 20 (relating to insolvent debtors) inapplicable to a Mufassal Small Cause Court, notwithstanding the words "any Court other than a District Court" and any Court situate within his district, which occur in that section. Consequently the Government Resolution of 3rd April 1878, investing the Judge of the Small Cause Court at Ahmedabad with powers, under the said chapter, to adjudicate in insolvency matters, is *ultra vires* and invalid.—*Lallu Ganesh v. Ranchhod Khandas*, I. L. R., 2 Bom. 641. [July 2, 1878.]

A PERSON applying under Act X. of 1877, s. 344, must satisfy the Court that his case comes within the provisions of s. 351, and the burden of proof lies upon him. An order dismissing such an application is appealable under s. 588.—*Mumtaz Hossein v. Brij Mohun Thakoor*, I. L. R., 4 Cal. 888. [Dec. 4, 1878.] Followed in I. L. R., 6 Cal. 168. [Aug. 11, 1880.]

THERE is no appeal from an order made under Act X. of 1877, s. 351, refusing to grant an application to be made an insolvent. The appeal allowed under s. 588, cl. 17, so far as an order under s. 351 is concerned, is on behalf of the judgment-creditor only.—*Juggutjeebun Gooptoo v. Haro Coommar Pal*, I. L. R., 5 Cal. 719. [Mar. 8, 1880.] Dis-sented from in I. L. R., 6 Cal. 168. [Aug. 11, 1880.]

A JUDGMENT-DEBTOR, having been arrested in 1871, offered to place his estate at the disposal of the Court, and was examined on oath as to the particulars of the estate, and discharged from custody. His estate was never taken possession of, and part of it was subsequently disposed of by him to a stranger. Held that he was not liable to be arrested again in execution of the decree.—*Venkatakrishna v. Coelho (P. G.)*, I. L. R., 6 Mad. 170. [Oct. 6, 1882.]

THE lower Court ordered the attachment of a house belonging to the judgment-debtor in execution of a money-decree passed against him by that Court. The judgment-debtor then applied to be declared an insolvent under s. 344 of the Civil Procedure Code (Act X. of 1877). Held that it could not entertain the application.—*Purbhudas Velji v. Chugun Raichand*, I. L. R., 8 Bom. 196. [Feb. 15, 1883.]

WHEN an application to be declared an insolvent, under s. 344 of the Civil Procedure Code, was preferred, the requirements of that section had not been fulfilled, as the applicant had not been arrested or imprisoned in execution of a decree for money, nor had his property been attached in execution of such a decree. Eleven days after the application had been preferred, the applicant's property was attached in execution of such a decree. One of the creditors subsequently objected to the application on the ground that when it was preferred the requirements of s. 344 had not been fulfilled. *Held* that the application should not on that ground have been dismissed.—*Makhan Lal v. Gulzari Mal*, I. L. R., 6 All. 289. [April 9, 1884.]

A JUDGMENT-DEBTOR, having been arrested in execution of a decree of the High Court in its original civil jurisdiction, and brought before the Court under the provisions of s. 336 of the Code of Civil Procedure, claimed to be discharged on the ground that he intended to apply to the Court to be declared an insolvent either under the provisions of chap. 20 of the Code or of 11 & 12 Vic., c. 21. *Held* that the judgment-debtor, on expressing his intention to file a petition and schedule under 11 & 12 Vic., c. 21, and complying with the conditions of s. 336 of the Code of Civil Procedure, was entitled to be discharged.—*Ex parte Pinsent*, I. L. R., 8 Mad. 276. [Feb. 6, 1885.]

THE plaintiff Gangádhār obtained a decree against the defendant. In execution of that decree, certain property was attached on 5th March 1881. Although the judgment-debtor was not arrested in execution of that decree, nevertheless he, on the 18th October 1882, applied to the Court of the Subordinate Judge to be declared an insolvent under s. 344 of the Code of Civil Procedure (Act XIV. of 1882). He was declared an insolvent under that section, and the nazir of the Court was appointed a receiver on 22nd December 1883. The receiver proceeded, under the direction of the Court, to convert the property of the insolvent into money under s. 356 (a) of the Code. Certain immoveable property was purchased by the petitioner Tukārām for Rs. 1,032 on 4th December 1884. Tukārām, after some time, presented an application, in which he stated that, inasmuch as the insolvent had not been arrested in execution of the decree obtained by Gangádhār, the Court had no jurisdiction; and he prayed that, if such was the case, the sale should be set aside, and the money returned to him. No appeal was preferred by the judgment-creditor, or other creditors of the insolvent, against the order of insolvency made under s. 351 of the Code. The Subordinate Judge referred the following question to the High Court, *viz.*, “whether a Court, which has declared the insolvency of a judgment-debtor, can direct the receiver to proceed under s. 356 of the Code and complete any sale, though the purchaser objects to the direction on the ground of want of jurisdiction in the Court, which objection seems to the Court to be valid, but too late.” *Held* that as the declaration of insolvency was *ultra vires*, the Subordinate Judge should take no further steps to give effect to it, but leave the parties concerned to take such measures as they may be advised.—*Gangádhār Bhivráv v. Datto Krishnáji*, I. L. R., 9 Bom. 368. [Feb. 26, 1885.]

THE decree-holder respondent in an appeal from an order refusing an application by the judgment-debtor for declaration of insolvency under s. 344 of the Civil Procedure Code, died, and the judgment-debtor, appellant, took no steps to have the legal representative of the deceased substituted as respondent in his place. *Held* that art. 171B, sch. 2 of the Limitation Act (XV. of 1877), applied to the case, and that, as no one had been brought on the record to represent the deceased respondent within the period prescribed, the appeal must abate. *Per* Mahmood, J., that whatever the position of the parties might have been in the regular suit, in the insolvency-proceedings the judgment-debtor occupied a position analogous to that of a plaintiff, and the decree-holder occupied the position of a defendant. *Narain Das v. Lajja Ram* (I. L. R., 7 All. 693) distinguished.—*Rameshar Singh v. Bisheshar Singh*, I. L. R., 7 All. 734. [Mar. 30, 1885.]

A JUDGMENT-DEBTOR arrested in execution of a decree for money, who has not, on his committal to jail, expressed his intention of applying to be declared an insolvent under chap. 20 of the Code of Civil Procedure, is nevertheless entitled during his imprisonment to make an application for that purpose; and the Court may, under s. 349, pending the hearing of such application, release him on his finding security to appear when called upon. The word “arrest” in s. 349 should be read as meaning “under detention” or “detained in custody.” In deciding whether or not a payment made to a particular creditor amounts to an unfair preference within the meaning of s. 361 of the Code, the Courts may fairly (where there is no other reason for impeaching the transaction as an unfair preference apart from the provisions of the Insolvent Act) refer to, and be guided by, the provisions of the Insolvent Act, which treats a transaction as an unfair preference only when it has occurred within a limited time before the insolvency-proceedings. Where the Legislature has provided two methods by which a debtor can obtain protection from arrest or other serious consequences, and if one of those methods, in any particular case,

turns out to be more favourable to the debtor than the other, the Courts will not deprive him of that advantage.—In the *Matter of Hastie*, I. L. R., 11 Cal. 451. [April 8, 1885.]

345. The application, when made by the judgment-debtor, shall set

Contents of application. forth—

(a) the fact of his arrest or imprisonment, or that an order for the attachment of his property has been made, the Court by whose order he was arrested or imprisoned, or by which the order of attachment was made, and where he has been arrested or imprisoned, the place in which he is in custody ;

(b) the amount, kind, and particulars of his property, and the value of any such property not consisting of money ;

(c) the place or places in which such property is to be found ;

(d) his willingness to put it at the disposal of the Court ;

(e) the amount and particulars of all pecuniary claims against him ; and

(f) the names and residences of his creditors, so far as they are known to, or can be ascertained by, him.

The application, when made by the holder of a decree for money, shall set forth the date of the decree, the Court by which it was passed, the amount remaining due thereunder, and the place where the judgment-debtor resides or is in custody.

346. The application shall be signed and verified by the applicant in

Subscription and verification of application.

manner hereinbefore prescribed for signing and verifying plaints.

347. The Court shall fix a day for hearing the application, and shall

Service of copy of application and notice.

cause a copy thereof, with a notice in writing of the time and place at which it will be heard, to be stuck up in Court, and served at the applicant's expense—

where the applicant is the judgment-debtor—on the holder of the decree in execution of which he was arrested or imprisoned or the order of attachment was made, or on the pleader of such decree-holder and on the other creditors (if any) mentioned in the application :

where the applicant is the decree-holder—on the judgment-debtor or his pleader.

The Court may, if it thinks fit, publish, at the applicant's expense, the application in such official Gazettes and public newspapers as it thinks fit.

Where the applicant is the judgment-debtor, the Court may exempt him from any payments under this section if satisfied that he is unable to make them.

348. The Court may also, if it thinks fit, cause a like copy and notice

Power to serve other creditors.

to be served on any other person alleging himself to be a creditor of the applicant, and applying for leave to be heard on the application.

349. Where the judgment-debtor is under arrest, the Court may, pend-

Powers of Court as to judgment-debtor under arrest.

ing the hearing under section 350, order him to be immediately committed to jail, or leave him in the custody of the officer to whom the service of the warrant was entrusted, or release him on his furnishing sufficient security that he will appear when called upon.

A SECURITY-BOND given under the provisions of s. 349 of the Code of Civil Procedure, 1882, for the production of a judgment-debtor when called upon, cannot be enforced summarily.—*Moidin v. Chandu*, I. L. R., 7 Mad. 273. [Oct. 3, 1888.]

Ss. 336 and 349 of the Code of Civil Procedure, 1882, are applicable to judgment-debtors under arrest, but not committed to jail. A judgment-debtor committed to jail can only be discharged under s. 341.—*In re Quarrie*, I. L. R., 8 Mad. 503. [July 10, 1885.]

A JUDGMENT-DEBTOR once arrested and imprisoned in execution of a decree cannot, under the Civil Procedure Code, be again arrested under a fresh writ of attachment on the same decree.—Secretary of State for India v. Council v. Judah, I. L. R., 12 Cal. 652. [April 1, 1886.]

350. On the day so fixed, or on any subsequent day to which the Court may adjourn the hearing, the Court shall examine the judgment-debtor, in the presence of the persons on whom such notice has been served or their pleaders, as to his then circumstances and as to his future means of payment, and shall hear the said decree-holder, the other creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors, in opposition to the judgment-debtor's discharge; and may, if it thinks fit, grant time to the said decree-holder and other creditors or persons to adduce evidence showing that the judgment-debtor is not entitled to be declared an insolvent.

Declaration of insolvency, and appointment of Receiver.

351. If the Court is satisfied—

(a) that the statements in the application are substantially true; (b) that the judgment-debtor has not, with intent to defraud his creditors, concealed, transferred, or removed any part of his property since the institution of the suit in which was passed the decree in execution of which he was arrested or imprisoned, or the order of attachment was made, or at any subsequent time;

(c) that he has not, knowing himself to be unable to pay his debts in full, recklessly contracted debts, or given an unfair preference to any of his creditors by any payment or disposition of his property;

(d) that he has not committed any other act of bad faith regarding the matter of the application;

the Court may declare him to be an insolvent, and may also, if it thinks fit, make an order appointing a receiver of his property, or, if it does not appoint such receiver, may discharge the insolvent.

If the Court is not so satisfied, it shall make an order rejecting the application.

A PERSON applying under Act X. of 1877, s. 344, must satisfy the Court that his case comes within the provisions of s. 351, and the burden of proof lies upon him. An order dismissing such an application is appealable under s. 588.—*Mumtaz Hossein v. Brij Mohun Thakoor*, I. L. R., 4 Cal. 888. [Dec. 4, 1878.] Followed in I. L. R., 6 Cal. 168. [Aug. 11, 1880.]

AN appeal lies against an order passed under s. 351 of Act X. of 1877, although it was an order refusing to declare petitioner an insolvent. The words used in cl. 2 of s. 351, "the matter of the application," embrace the insolvency, and all the facts and circumstances material to explain the insolvency. Acts of bad faith towards creditors just at the period at which the applicant was contemplating insolvency may be held to be part of the matter of the application. A Judge would not be exercising a right discretion under s. 351 if he refused relief in the case of persons who, although knowing that they had not the means of paying at the time the debt was contracted, yet honestly believed upon reasonable grounds that they would have the means of paying eventually.—*Bavachi Packi v. Pierce, Leslie, & Co.*, I. L. R., 2 Mad. 219. [Mar. 31, 1879.]

AN order refusing to grant an application to be made an insolvent is appealable under cl. 17, s. 588 of the Code of Civil Procedure. Such an order must be considered to be one made under s. 351.—*Nubbi Buksh v. Chasni*, I. L. R., 6 Cal. 168. [Aug. 11, 1880.]

J, IN pursuance of a previous agreement with B, and on being pressed by B, who had a pecuniary claim against him, assigned to B the whole of his property by way of sale, in consideration in part of B's pecuniary claim against him. Held that by such assign-

ment J did not give B an "undue preference" to his other creditors, within the meaning of s. 351 of Act X. of 1877.—*Joakim v. Secretary of State for India*, I. L. R., 3 All. 530. [Feb. 21, 1881.]

A JUDGMENT-DEBTOR, having applied to be declared an insolvent under s. 344 of the Code of Civil Procedure, entered the name of A in the list of his creditors, together with the amount of the debt. No creditors appearing to oppose the application or prove their debts, the Court, without framing a schedule as required by s. 352, declared the judgment-debtor an insolvent under s. 351. In a suit brought by A to recover the debt, *held* that as the provisions of s. 352 had not been followed, the declaration under s. 351 could not operate as a decree between the insolvent and A, and that A was entitled to a decree.—*Arunachala v. Ayyavu*, I. L. R., 7 Mad. 318. [Mar. 3, 1884.]

BEFORE rejecting an application by a judgment-debtor for a declaration of insolvency with reference to the provisions of s. 351 (a) of the Civil Procedure Code, it is necessary that the Court should be satisfied that the applicant has wilfully made false statements: unintentional inaccuracies are not sufficient grounds for rejection.—*Karim Bakhsh v. Misri Lal*, I. L. R., 7 All. 295. [Jan. 23, 1885.]

THE plaintiff Gangadhar obtained a decree against the defendant. In execution of that decree, certain property was attached on 5th March 1881. Although the judgment-debtor was not arrested in execution of that decree, nevertheless he, on the 18th October 1882, applied to the Court of the Subordinate Judge to be declared an insolvent under s. 344 of the Code of Civil Procedure (Act XIV. of 1882). He was declared an insolvent under that section, and the nazir of the Court was appointed a receiver on 22nd December 1883. The receiver proceeded, under the direction of the Court, to convert the property of the insolvent into money under s. 356 (a) of the Code. Certain immoveable property was purchased by the petitioner Tukaram for Rs. 1,032 on 4th December 1884. Tukaram, after some time, presented an application, in which he stated that, inasmuch as the insolvent had not been arrested in execution of the decree obtained by Gangadhar, the Court had no jurisdiction; and he prayed that, if such was the case, the sale should be set aside, and the money returned to him. No appeal was preferred by the judgment-creditor, or other creditors of the insolvent, against the order of insolvency made under s. 351 of the Code. The Subordinate Judge referred the following question to the High Court, *viz.*, "whether a Court, which has declared the insolvency of a judgment-debtor, can direct the receiver to proceed under s. 356 of the Code and complete any sale, though the purchaser objects to the direction on the ground of want of jurisdiction in the Court, which objection seems to the Court to be valid, but too late." *Held* that as the declaration of insolvency was *ultra vires*, the Subordinate Judge should take no further steps to give effect to it, but leave the parties concerned to take such measures as they may be advised.—*Gangadhar Bhivray v. Datto Krishnaji*, I. L. R., 9 Bom. 368. [Feb. 26, 1885.]

S. 351 (b) of the Civil Procedure Code contemplates a case of active concealment, transfer, or removal of substantive property since the institution of the suit in which was passed the decree in execution of which the judgment-debtor was arrested or imprisoned, with intent to deprive the creditor or creditors of available assets for division; and it does not cover an omission by the judgment-debtor, in his application for a declaration of insolvency, of a statement as to his right to demand partition of ancestral estate in which he is a sharer, especially where there is no evidence of any intent to defraud.—*Sukrit Narsin Lal v. Raghunath Sahai*, I. L. R., 7 All. 445. [Mar. 3, 1885.]

WHERE property has been made the subject of attachment under chap. 19 of the Civil Procedure Code, the right of an objector to assert his claim to be the true owner of the property under s. 278, and the jurisdiction of the Court to entertain the objection, are not ousted by the mere circumstances that the judgment-debtor has been declared an insolvent, and his property vested in a receiver under chap. 20. It is the judgment-debtor's property only, not that of the objector, that is thus vested.—*Paras Ram v. Karam Singh*, I. L. R., 9 All. 232. [Jan. 11, 1887.]

352. The creditors mentioned in the application, and the other persons

creditors to prove their (if any) alleging themselves to be creditors of the debts.

insolvent, shall then produce evidence of the amount and particulars of their respective pecuniary claims against him; and the Court shall, by order, determine the persons who have proved themselves to be the insolvent's creditors and their respective debts; and shall frame a

Schedule to be framed.

schedule of such persons and debts; and the declaration under section 351 shall be deemed to be a decree in favour of each of the said creditors for their said respective debts.

A copy of every such schedule shall be stuck up in the Court-house.

Nothing in this section shall be deemed to entitle a partner in an insolvent firm, or, when he has died before the insolvency, his legal representative, to prove in competition with the creditors of the firm.

A JUDGMENT-DEBTOR was declared an insolvent, and a receiver of his property appointed under s. 351 of the Civil Procedure Code, and his creditors were ordered to come forward and prove their claims within a certain time. No creditor came forward for that purpose within such time, and in consequence the case was struck off the file, and the order appointing a receiver cancelled, and no schedule was framed under s. 352. Subsequently a creditor applied to have his name entered in such schedule. *Held* that the applicant, notwithstanding no schedule had been framed, was an "unscheduled" creditor, and was therefore entitled, under s. 353 of the Civil Procedure Code, to make the application.—*Madho Prasad v. Bhola Nath*, I. L. R., 5 All. 268. [Jan. 11, 1883.]

A JUDGMENT-DEBTOR, arrested and imprisoned in execution, applied to be declared an insolvent, and included a mortgage-debt in his application. Notice was issued to the mortgagee, who failed to appear and prove his claim, and was consequently omitted from the schedule prepared under s. 352 of the Code of Civil Procedure. A receiver was appointed under s. 354; the whole of the property of the insolvent was made over to the receiver, including the nine fields mortgaged, which the insolvent held as tenant of the mortgagee. The receiver sold one out of the nine fields to satisfy the creditors entered in the schedule, and ultimately restored the remaining eight fields to the judgment-debtor. The mortgagee then sued to eject the judgment-debtor for default in payment of rent. The latter pleaded his discharge under s. 355. *Held* that the discharge did not affect the mortgage-debt, and that a receiver is bound, as a condition of dealing with mortgaged property, in every case to pay off the mortgage, even when the mortgagee has not sought to be placed in the schedule—the position of the mortgagee being essentially different from that of the unsecured creditor. *Case of Chotalal v. Nahansa* (printed judgments for 1882, p. 80) distinguished.—*Shridhar Narayan v. Atmaram Govind*, I. L. R., 7 Bom. 455. [July 28, 1883.]

In July 1878, a person was declared an insolvent under the provisions of chap. 20 of the Civil Procedure Code. Only one creditor then proved his debt, and no schedule was framed. This creditor having applied for the sale of property belonging to the insolvent, another creditor, in May 1883, applied to prove his debt, and to have his name inserted in the schedule which the Court then ordered to be framed. *Held* that such application could not be treated as made under s. 353, as no schedule had been framed, but must be regarded as in the nature of a tender of proof of debt under s. 352; that it was governed by art. 178 of the Limitation Act, 1877; and that, the right to apply having accrued at the date of the declaration of insolvency, the application was beyond time.—*Parshadi Lal v. Chitani Lal*, I. L. R., 6 All. 142. [Dec. 21, 1883.]

353. Any creditor of the insolvent who is not mentioned in such

Applications by unscheduled creditors. schedule may apply to the Court for permission to produce evidence of the amount and particulars of his pecuniary claims against the insolvent, and, in case the applicant proves himself to be a creditor of the insolvent, for an order directing his name to be inserted in the schedule as a creditor for the debt so proved.

Any creditor mentioned in the schedule may apply to the Court for an order altering the schedule so far as regards the amount, nature, or particulars of his own debt, or to strike out the name of another creditor, or to alter the schedule so far as regards the amount, nature, or particulars of the debt of another creditor.

In the case of any application under this section, the Court, after causing such notices as it thinks fit to be served, at the applicant's expense, on the insolvent and the other creditors, and hearing their objections (if any), may comply with or reject the application.

354. Every order under section 351 shall be published in the local

Effect of order appointing official Gazette, and shall operate to vest in the receiver. receiver all the insolvent's property (except the particulars specified in the first proviso to section 266), whether set forth in his application or not.

WHERE property has been made the subject of attachment under chap. 19 of the Civil Procedure Code, the right of an objector to assert his claim to be the true owner of the property under s. 278, and the jurisdiction of the Court to entertain the objection, are not ousted by the mere circumstances that the judgment-debtor has been declared an insolvent, and his property vested in a receiver under chap. 20. It is the judgment-debtor's property only, not that of the objector, that is thus vested.—*Paras Ram v. Karam Singh*, I. L. R., 9 All. 232. [Jan. 11, 1887.]

355. The receiver so appointed shall give such security as the Court may direct, and shall possess himself of all such property, except as aforesaid ; and on his certifying that the insolvent has placed him in possession thereof, or has done everything in his power for that purpose, the Court may discharge the insolvent upon such conditions (if any) as the Court thinks fit.

Duty of receiver.

356. The receiver shall proceed under the direction of the Court—

- (a) to convert the property into money ;
- (b) pay thereout debts, fines, and penalties (if any) due by the insolvent to Government ;
- (c) to pay the said decree-holder's costs ;
- (d) to discharge, according to their respective priorities, all debts secured by mortgage of the insolvent's property ;
- (e) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts and without any preference :

and such receiver may retain, as a remuneration for the performance of

His right to remuneration. his duties, a commission, to be fixed by the Court, not exceeding the rate of five per centum upon the amount of the balance so distributed (the amount of the commission so retained being deemed a distribution), and shall deliver the surplus (if any) to the insolvent or his

Delivery of surplus.

legal representative :

Provided that, in any local area in which a declaration has been made under section 320 and is in force, no sale of immoveable property paying revenue to Government, or held or let for agricultural purposes, shall be made by the receiver ; but, after he has sold the other property of the insolvent, the Court shall ascertain (a) the amount required to satisfy the claims of the scheduled creditors after deducting the moneys already received, (b) the immoveable property of the insolvent remaining unsold, and (c) the incumbrances (if any) existing thereon, and shall forward a statement to the Collector containing the particulars aforesaid ; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by sections 322 to 325 (both inclusive) as he thinks fit, and subject to the provisions of those sections, so far as they may be applicable, and shall hold at the disposal of the Court all sums that may come to his hands by such exercise.

THE plaintiff Gangadhar obtained a decree against the defendant. In execution of that decree, certain property was attached on 5th March 1881. Although the judgment-debtor was not arrested in execution of that decree, nevertheless he, on the 18th October 1882, applied to the Court of the Subordinate Judge to be declared an insolvent under s. 344 of the Code of Civil Procedure (Act XIV. of 1882). He was declared an insolvent under that section, and the nazir of the Court was appointed a receiver on 22nd December 1883. The receiver proceeded, under the direction of the Court, to convert the property of the insolvent into money under s. 356 (a) of the Code. Certain immoveable

property was purchased by the petitioner Tukárám for Rs. 1,032 on 4th December 1884. Tukárám, after some time, presented an application, in which he stated that, inasmuch as the insolvent had not been arrested in execution of the decree obtained by Gangádhár, the Court had no jurisdiction; and he prayed that, if such was the case, the sale should be set aside, and the money returned to him. No appeal was preferred by the judgment-creditor, or other creditors of the insolvent, against the order of insolvency made under s. 351 of the Code. The Subordinate Judge referred the following question to the High Court, viz., "whether a Court, which has declared the insolvency of a judgment-debtor, can direct the receiver to proceed under s. 356 of the Code and complete any sale, though the purchaser objects to the direction on the ground of want of jurisdiction in the Court, which objection seems to the Court to be valid, but too late." *Held* that as the declaration of insolvency was *ultra vires*, the Subordinate Judge should take no further steps to give effect to it, but leave the parties concerned to take such measures as they may be advised.—Gangádhár Bhivráv v. Datto Krisnáji, I. L. R., 9 Bom. 368. [Feb. 26, 1885.]

357. An insolvent discharged under section 351 or section 355 shall not be arrested or imprisoned on account of any of the scheduled debts. But (subject to the provisions of section 358) his property, whether previously or subsequently acquired (except the particulars specified in the first proviso to section 266, and except the property vested in the receiver), shall, by order of the Court, be liable to attachment and sale until the debts due to the scheduled creditors are satisfied to the extent of one-third, or until the expiry of twelve years from the date of the order of discharge under section 351 or section 355.

A JUDGMENT-DEBTOR once arrested and imprisoned in execution of a decree cannot, under the Civil Procedure Code, be again arrested under a fresh writ of attachment on the same decree.—Secretary of State for India in Council v. Judah, I. L. R., 12 Cal. 652. [April 1, 1886.]

358. If the aggregate amount of the scheduled debts is two hundred rupees or a less sum, the Court may, and in any case after the scheduled debts have been satisfied to the extent of one-third, or after the expiry of twelve years from the order of discharge, the Court shall, declare the insolvent, discharged as aforesaid, absolved from further liability in respect of such debts.

AN insolvent, who had procured, and taken, and acted on an insolvency order, which had been granted to him because of the withdrawal of the opposition of his creditors, by reason solely of his engagement to pay a certain sum monthly until the whole of his debts should be discharged, after his scheduled debts had been satisfied to the extent of one-third, applied under s. 358 of the Civil Procedure Code to be declared discharged from further liability in respect of his debts. *Held* that, under the circumstances, his application had been properly refused.—Downes v. Richmond, I. L. R., 5 All. 258. [Jan. 4, 1883.]

Procedure in case of dishonest applicant.

359. Whenever, at the hearing under section 350, it is proved that the applicant has—

(a) been guilty, in his application, of any concealment or of wilfully making any false statement as to the debts due by him, or respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust;

(b) fraudulently concealed, transferred, or removed any property; or

(c) committed any other act of bad faith regarding the matter of the application,

the Court shall, at the instance of any of his creditors, sentence him, by order in writing, to imprisonment for a term which may extend to one year from the date of committal.

Or the Court may, if it thinks fit, send him to the Magistrate to be dealt with according to law.

360. The Local Government may, by notification in the official Gazette, invest any Court other than a District Court with the powers conferred on District Courts by sections 344 to 359 (both inclusive), and the District Judge may transfer to any Court situate in his district, and so invested, any case instituted under section 344.

Any Court so invested may entertain any application under section 344 by any person arrested in execution of a decree of such Court.*

UNDER s. 360 of the Code of Civil Procedure, the Local Government cannot invest a Muzassal Small Cause Court with the insolvency jurisdiction conferred on District Courts by chap. 20 of the said Code, inasmuch as, by reason of s. 5, chap. 20 does not extend to such Courts of Small Causes.—*Séthu v. Venkatarámá*, I. L. R., 9 Mad. 112. [Oct. 3, 1885.]

PART II. OF INCIDENTAL PROCEEDINGS.

CHAPTER XXI.

OF THE DEATH, MARRIAGE, AND INSOLVENCY OF PARTIES.

No abatement by party's death, if right to sue survives.

361. The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

Ditto.

Illustrations.

(a.) A covenants with B and C to pay an annuity to B during C's life. B and C sue A to compel payment. B dies before the decree. The right to sue survives to C, and the suit does not abate.

(b.) In the same case, all the parties die before decree. The right to sue survives to the representative of the survivor of B and C, and he may continue the suit against A's representative.

(c.) A sues B for libel. A dies. The right to sue does not survive, and the suit abates.

(d.) A, a member of a Hindu joint family under the Mitákshará law, institutes a suit for partition of the family-property. A dies leaving B, a minor son, his heir. The right to sue survives to B, and the suit does not abate.

362. If there be more plaintiffs or defendants than one, and any of them dies, and if the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

Ditto.

363. If there be more plaintiffs than one, and any of them dies, and if the right to sue does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them and the legal representatives of the deceased plaintiff jointly, the Court may, on the application of such legal representative, enter his name on the

Ditto.

* The third (or last) paragraph of this section has been repealed by Act XIV. of 1885, s. 3.

record in the place of such deceased plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and such legal representative.

THE provision of the Limitation Act (XV. of 1877), sch. 2, art. 171, which gives a period of sixty days to a person claiming to be the legal representative of a deceased plaintiff under s. 363 or 365 of the Code of Civil Procedure, does not apply to the representative of a deceased judgment-creditor claiming admission to continue execution-proceedings commenced by him. The Code of Civil Procedure (Act X. of 1877) does not provide that applications for execution shall, like suits, abate by the death of the judgment-creditor; such a representative may, therefore, come in at any time, as his coming in is contemplated in art. 179, expl. 1 of sch. 2 of the Limitation Act, subject always to the same conditions as would apply to his principal.—*Gulabdas v. Lakshman Narhar*, I. L. R., 3 Bom. 221. [April 3, 1879.]

If a plaintiff dies after decree, his representatives are not bound to apply within 60 days to be made parties to the suit, but have the same time to file an appeal as the plaintiff would have had. The Civil Procedure Code, ss. 363—365, and the Limitation Act, sch. 2, art. 171, do not apply to the case of a plaintiff dying after decree.—*Rāmanāda Sāstri v. Minatchi Ammal*, I. L. R., 3 Mad. 236. [July 12, 1881.]

Extending to
Provincial S.
C. Courts.

364. If, within the time limited by law, no application be made to the

Procedure where no application is made by representative of deceased plaintiff.

Court by any person claiming to be the legal representative of a deceased plaintiff, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs;

and the legal representative (if any) of the deceased plaintiff shall be made a party, and shall be interested in, and bound by, the decree passed in the suit, in the same manner as if the suit had proceeded at his instance conjointly with the surviving plaintiff or plaintiffs.

Ditto.

365. In case of the death of a sole plaintiff or sole surviving plaintiff,

Procedure in case of death of sole, or sole surviving, plaintiff.

the Court may, where the right to sue survives, on the application of the legal representative of the deceased, enter his name in the place of such plaintiff on the record, and the suit shall thereupon proceed.

THE provision of the Limitation Act (XV. of 1877), sch. 2, art. 171, which gives a period of sixty days to a person claiming to be the legal representative of a deceased plaintiff under s. 363 or 365 of the Code of Civil Procedure, does not apply to the representative of a deceased judgment-creditor claiming admission to continue execution-proceedings commenced by him. The Code of Civil Procedure (Act X. of 1877) does not provide that applications for execution shall, like suits, abate by the death of the judgment-creditor; such a representative may, therefore, come in at any time, as his coming in is contemplated in art. 179, expl. 1 of sch. 2 of the Limitation Act, subject always to the same conditions as would apply to his principal.—*Gulabdas v. Lakshman Narhar*, I. L. R., 3 Bom. 221. [April 3, 1879.]

A SOLE plaintiff having died after decree, an application was made more than 60 days after his death, by his legal representative, for an order that his name might be substituted on the record for that of the original plaintiff, and that a sum of money to which the original plaintiff, if alive, would have been entitled, might be paid to him, the legal representative. *Held* that s. 372 of the Civil Procedure Code did not apply to the case, the section contemplating a proceeding before the determination of the suit; and, further, that the application was barred by Act XV. of 1877, sch. 2, art. 171. *Held* also that s. 232 had no application. S. 365 of the Civil Procedure Code (amended by Act XII. of 1879, s. 61) does not apply to the case of a sole plaintiff dying after decree, the right to sue being merged in the decree.—*Cally Churn Mullick v. Bhuggobutty Churn Mullick* 5 C. L. R. 108. [Sep. 9, 1879.]

A JUDGMENT-DEBTOR applied that an execution-sale of property belonging to him should be set aside, as the decree-holder was dead when such sale took place, and such sale was in consequence invalid. This application was disposed of by the Court executing the decree in the presence of the judgment-debtor and purchaser. The Court held that the fact of such sale having taken place after the decree-holder's death was no ground for setting it aside, and disallowed such application, and made an order confirming such sale.

Held per Pearson, J., that the application for the execution of the decree abated on the death of the decree-holder, not having been prosecuted by his legal representative, and such sale was, under the circumstances, improper and invalid, and the order confirming it should be set aside. *Per Spankie, J.*, that such sale was not invalid by reason of the decree-holder's death before it took place. The order confirming it, however, was improper, and should be reversed, and the case should be remanded to be dealt with under the provisions of ss. 365 and 366 of Act X. of 1877, as the Court executing the decree should have proceeded under those sections. *Per Oldfield, J.*, and *Straight, J.*, that the death of the decree-holder prior to such sale did not render it void. The provisions of ss. 365 and 366 of Act X. of 1877 could not be adapted to execution-proceedings. As such sale had been published and conducted according to law, it had properly been confirmed.—*Dulari Mohan Singh, I. L. R., 9 All. 759. [April 21, 1881.]*

If a plaintiff dies after decree, his representatives are not bound to apply in 60 days to be made parties to the suit, but have the same time to file an appeal as the plaintiff would have had. The Civil Procedure Code, ss. 363—365, and the Limitation Act, sch. 2, art. 171, do not apply to the case of a plaintiff dying after decree.—*Rāmanāda Sāstri, v. Minatchi Ammal, I. L. R., 3 Mad. 236. [July 12, 1881.]*

PER Mitter, J. (Garth, C.J. dubitante).—Notwithstanding that s. 582 of the Code of Civil Procedure does not expressly direct that the word 'plaintiff' occurring in s. 366 shall be held to include an 'appellant,' yet the power conferred by s. 366 on the Court of original jurisdiction to award costs against the estate of a deceased plaintiff may, by analogy, be taken to be conferred on the Appellate Court. *Lakshmi Bai v. Balkrishna (I. L. R., 4 Bom. 654) followed.*—*Rajmonce Dabee v. Chunder Kant Sandel, I. L. R., 8 Cal. 440. [Dec. 21, 1881.]*

The plaintiff died on the 28th August 1883, and in December 1884, letters of administration to his estate were granted to the Administrator-General. The defendant died in June 1884, leaving a widow and one son him surviving. By his will he appointed two executors. On the 3rd February 1885, the Administrator-General took out a summons to revive the suit. *Held* that, notwithstanding the provisions of s. 365 of the Civil Procedure Code (Act XIV. of 1882) and of the Limitation Act (XV. of 1877), it was competent for a Judge in chambers to revive the suit by making an order for abatement under s. 366 of the Code, coupled with an order under s. 371 setting aside the order for abatement.—*Fulvahu v. Goculdas Vallabhdas, I. L. R., 9 Bom. 275. [Mar. 27, 1885.]*

366. If, within the time limited by law, no such application be made to the Court by any person claiming to be the legal representative of the deceased plaintiff, the Court may pass an order that the suit shall abate, and shall, on the application of the defendant, award to the defendant the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff;

Extending to Provincial S. C. Courts.

Abatement where no application by representative of deceased plaintiff.

or the Court may, if it think proper, on the application of the defendant, and upon such terms as to costs or otherwise as it thinks fit, pass such other order as it thinks fit for bringing in the legal representative of the deceased plaintiff, or for proceeding with the suit in order to a final determination of the matter in dispute, or for both those purposes.

Explanation.—A certificate of heirship, or a certificate to collect debts, does not of itself constitute the person holding it the legal representative of the deceased. But when the person holding any such certificate obtains thereby property belonging to deceased, he may be treated as a legal representative liable in respect of such property.

A JUDGMENT-DEBTOR applied that an execution-sale of property belonging to him should be set aside, as the decree-holder was dead when such sale took place, and such sale was in consequence invalid. This application was disposed of by the Court executing the decree in the presence of the judgment-debtor and purchaser. The Court held that the fact of such sale having taken place after the decree-holder's death was no ground for setting it aside, and disallowed such application, and made an order confirming such sale. *Held per Pearson, J.*, that the application for the execution of the decree abated on the death of the decree-holder, not having been prosecuted by his legal representative, and such sale was under the circumstances improper and invalid, and the order confirming it should.

be set aside. *Per* Spankie, J., that such sale was not invalid by reason of the decree-holder's death before it took place. The order confirming it, however, was improper, and should be reversed, and the case should be remanded to be dealt with under the provisions of ss. 365 and 366 of Act X. of 1877, as the Court executing the decree should have proceeded under those sections. *Per* Oldfield, J., and Straight J., that the death of the decree-holder prior to such sale did not render it void. The provisions of ss. 365 and 366 of Act X. of 1877 could not be adapted to execution proceedings. As such sale had been published and conducted according to law, it had properly been confirmed.—*Dulari v. Mohan Singh*, I. L. R., 3 All. 759. [April 21, 1881.]

AN Appellate Court rejected the application of the legal representative of a deceased sole plaintiff-appellant to enter his name in the place of such appellant on the record, on the ground that such application had not been made within the time limited by law, and passed an order that the suit should abate. *Held* that the order of the Appellate Court, passed under the first paragraph of s. 366 of Act X. of 1877, not being appealable under cl. 18, s. 588, of that Act, nor being a decree within the terms of s. 2, from which a second appeal would lie, was not appealable.—*Ahmad Ata v. Mata Badal Lal*, I. L. R., 3 All. 844. [June 7, 1881.]

PER Mitter, J. (Garth, C.J., *dubitante*).—Notwithstanding that s. 582 of the Code of Civil Procedure does not expressly direct that the word 'plaintiff' occurring in s. 366 shall be held to include an 'appellant,' yet the power conferred by s. 366 on the Court of original jurisdiction to award costs against the estate of a deceased plaintiff may, by analogy, be taken to be conferred on the Appellate Court. *Lakshmi Bai v. Balkrishna* (I. L. R., 4 Bom 654) followed.—*Rajmonee Dabee v. Chunder Kant Sandel*, I. L. R., 8 Cal. 440 [Dec. 21, 1881.]

THE plaintiff died on the 28th August 1883, and in December 1884, letters of administration to his estate were granted to the Administrator-General. The defendant died in June 1884, leaving a widow and one son him surviving. By his will he appointed two executors. On the 3rd February 1885, the Administrator-General took out a summons to revive the suit. *Held* that, notwithstanding the provisions of s. 365 of the Civil Procedure Code (Act XIV. of 1882) and of the Limitation Act (XV. of 1877), it was competent for a Judge in chambers to revive the suit by making an order for abatement under s. 366 of the Code, coupled with an order under s. 371 setting aside the order for abatement.—*Fulvahu v. Goculdás Vallabhdás*, I. L. R., 9 Bom. 275. [Mar. 27, 1885.]

AN order made under s. 366 of the Civil Procedure Code (Act XIV. of 1882), that a suit do abate, being virtually a decree within the meaning of s. 2, is appealable. The appellant's father having died during the pendency of an appeal lodged by him, a notice was served upon the appellant's two adult brothers; but they having failed to apply within sixty days, the appellant, who was a minor, applied, several months afterwards, to be put on the record in his deceased father's place as his legal representative, which was done. The Assistant Judge, who heard the appeal, was of opinion that, in consequence of the omission on the part of the brothers of the appellant to apply, the appeal abated, and he passed an order accordingly. *Held* that the application having been made by the minor son within the time limited by law, the order of abatement made by the Judge was wrong. Although the complete legal representation vested in the minor son and his two brothers, s. 366 of the Civil Procedure Code (Act XIV. of 1882) only required an application to be made by a person claiming to be the legal representative, in order to prevent an order of abatement being made. If neither of the brothers was willing to have his name placed on the record, the respondent was entitled to have them made defendants, so that they might be bound by the decree. The minor son could then proceed alone with the appeal.—*Bhikaji Ramchandra v. Purshotam*, I. L. R., 10 Bom. 220. [July 30, 1885.]

Extending to
Provincial S.
C. Courts.

367. If any dispute arise as to who is the legal representative of a deceased plaintiff, the Court may either stay the suit until the fact has been determined in another suit, or decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit.

Ditto.

368. If there be more defendants than one, and any of them die before decree, and the right to sue does not survive against the surviving defendant or defendants alone,

Procedure in case of death
of one of several defendants,

fore decree, and the right to sue does not survive
against the surviving defendant or defendants
alone,

or of sole, or sole surviving, defendant. and also in case of the death of a sole defendant, or sole surviving defendant, where the right to sue survives,

the plaintiff may make an application to the Court, specifying the name, description, and place of abode of any person whom he alleges to be the legal representative of the deceased defendant, and whom he desires to be made the defendant in his stead.

The Court shall thereupon enter the name of such representative on the record in the place of such defendant,

and shall issue a summons to such representative to appear on a day to be therein mentioned to defend the suit ;

and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant, and had been a party to the former proceedings in the suit :

Provided that the person so made defendant may object that he is not the legal representative of the deceased defendant, or may make any defence appropriate to his character as such representative.

When the plaintiff fails to make such application within the period prescribed therefor, the suit shall abate, unless he satisfies the Court that he had sufficient cause for not making the application within such period.

PROCEDURE analogous to that laid down in Act X. of 1877, s. 368, in respect to the death of a defendant, must be applied in the case of the death of a respondent. Where, therefore, a respondent dies during the pendency of an appeal, it is for the appellant to take the initiative, and he is at liberty to select one or more persons to defend the appeal ; and no person, other than the person so selected, has a right to force himself into the proceedings, and to claim to have his name entered as representative of the deceased respondent against the appellant's consent. Persons so introduced on the record may or may not be the real representatives of the deceased respondent, but the merits of their claim to be such, on the ground of any right or status, such as that of adoption, is immaterial to the determination of the appeal.—*Lakshmi Bai v. Balakrishna*, I. L. R., 4 Bom. 654. [Aug. 3, 1880.]

AN appeal having been declared to have abated on the 12th December 1881 under s. 368 of the Code of Civil Procedure, 1877, because the appellant had not applied within sixty days of the date of the death of the respondent to bring in his representative, an application was made in January 1882 to set aside the order, and was heard after the Code of Civil Procedure, 1882, came into force. *Held* that the application must be disposed of under the Code of Civil Procedure as it stood at the date of the application, and, therefore, that it was not open to the appellant to satisfy the Court that he had sufficient cause for not making the application within the prescribed period. S. 371 of the Code of Civil Procedure does not apply to the case in which a defendant or respondent dies.—*Suri v. Sitarama*, I. L. R., 7 Mad. 195. [Jan. 5, 1881.]

PER MITTER, J. (Garth, C.J., *dubitante*).—Notwithstanding that s. 582 of the Code of Civil Procedure does not expressly direct that the word ' plaintiff ' occurring in s. 366 shall be held to include an ' appellant,' yet the power conferred by s. 366 on the Court of original jurisdiction to award costs against the estate of a deceased plaintiff may, by analogy, be taken to be conferred on the Appellate Court. *Lakshmi Bai v. Balakrishna* (I. L. R., 4 Bom. 654) followed.—*Rajmonee Dabee v. Chunder, Kant Sandel*, I. L. R., 8 Cal. 440. [Dec. 21, 1881.]

IN a suit for the recovery of land against a sole defendant, the latter died before the hearing. Sixty-three days after the death of the defendant, the plaintiff applied to the Court to enter on the record the legal representative of the deceased defendant. On the 22nd of November 1880, the Court rejected the application under the provisions of Act XV. of 1877, sch. 2, cl. 171B, and ordered the suit to abate. On the same day the plaintiff applied to the Court to set aside the order directing the suit to abate, but this application was also rejected on the 20th of September 1881. On appeal to the High Court, *held* that no appeal lay against the order of the 20th of September 1881, and that an appeal against the order of the 22nd of November 1880 was out of time ; but that the High Court would take cognizance of the case under s. 622 of the Code of Civil Procedure. *Held* also that the application which was rejected on the 22nd of November 1880 was an application

under s. 372, and not under s. 368 of the Code of Civil Procedure, and that the applicant was entitled to make the application within three years, as allowed by Act XV. of 1877, sch. 2, cl. 178. *Gocool Chunder Gossamee v. Administrator-General of Bengal* (I. L. R., 5 Cal. 728; S. C., 5 C. L. R. 108) referred to.—*Benode Mohini Chowdhraia v. Sharat Chunder Dey Chowdhry*, I. L. R., 8 Cal. 837. [April 14, 1882.]

UNDER s. 368 of the Civil Procedure Code (Act XIV. of 1882), a plaintiff may have the representatives of a deceased sole defendant placed on the record so that he may continue his suit against them, but there is no section which allows the representatives of a sole defendant, who has died, to be placed on the record at their own request. Consequently, s. 582 gives no authority to a Civil Court to place on the record, at their own request, the representatives of a deceased sole respondent. Such an application cannot be entertained.—*Bai Javer v. Hathisingh Kesrisingh*, I. L. R., 9 Bom. 56. [July 14, 1884.]

AT an auction-sale held in execution of a decree passed against one Ganpat Anandráv, certain property put up for sale was purchased by one Khán Mahomed, the husband of the opponent. Subsequently Krishnaráv Anandráv, the brother of Ganpat Anandráv, brought a suit against the opponent to establish his right to the property purchased by the opponent's husband. On the 17th February 1882, he obtained a decree declaring that he (Krishnaráv Anandráv) was entitled to a half-share of the property in dispute, and an order was made that he should have joint possession with the opponent of one moiety of the property. On the termination of the above suit, which had been brought by Krishnaráv in *forma pauperis*, he was required to pay the court-fees. For that purpose he procured an advance of Rs. 200 from the applicant of the security of the moiety of the property which was awarded to him by the decree. He passed a deed of sale to the applicant on the understanding that the property should be re-conveyed to him by the applicant on the re-payment of the advance with interest. In the meantime cross appeals were filed against the above-mentioned decree passed in favour of Krishnaráv, and at the hearing of the appeal the lower Appellate Court varied the decree of the Subordinate Judge, holding that Krishnaráv Anandráv was entitled to the possession of the property so sought for. From this decree the opponent preferred a second appeal to the High Court, which, at the time of this application, was still pending. Before the hearing of the appeal, Krishnaráv Anandráv died, and the applicant thereupon applied to have his name placed on the record as respondent. *Held* that the applicant was entitled to be made a party. The analogy of s. 368 is to be extended generally to appeals, and the party appealing may choose his own respondent as representative of deceased. The more specific rule prescribed in that section must prevail, in the cases to which it is exactly applicable, over the more general rule in s. 372. But the rule in s. 368 may well be intended for the case in which the death, and death only, of the defendant constitutes the change of circumstances for which it was thought necessary to provide; but where there has been, not only the death of the respondent, but an alleged prior conveyance to him of the property awarded by the decree appealed against, there is a fact in addition to the fact contemplated by s. 368, and the rule in s. 372, being alone sufficiently inclusive, must apply. An appellant may determine who shall be respondent, but not that any particular person shall not be a respondent. The choice of respondents made by the appellant may be defective through ignorance or fraud, and the real representative of the decree-holder cannot justly be refused an opportunity of maintaining the decision which it is sought to upset.—*Rájaram Bhagwat v. Jibai*, I. L. R., 9 Bom. 151. [Sep. 15, 1884.]

ALTHOUGH a Court is bound by s. 368 of the Code of Civil Procedure to place on the record the name of the person alleged by the appellant to be the legal representative of a deceased respondent, nevertheless, where a person, other than the person alleged by the appellant to be such representative, claims, on good *prima facie* grounds, to be the representative of the deceased respondent, and the interests of the person entitled to the estate of the deceased may be prejudiced, the Court should, under s. 32 of the Code of Civil Procedure, proceed to make such claimant also a party to the appeal.—*Attichappa v. Ayanna*, I. L. R., 8 Mad. 300. [Oct. 20, 1884.]

HAVING regard to s. 3 of Act XIV. of 1882, it is clear that the word "Code" in sch. 2, art. 171B of Act XV. of 1877, applies to the present Code of Civil Procedure (Act XIV. of 1882), and that, therefore, the word "defendant" in s. 368 of that Code, when read with s. 582, must be held to include "respondent."—In the Matter of the Petition of Soshi Bhusan Chand; *Soshi Bhusan Chand v. Grish Chunder Talukdar*, I. L. R., 11 Cal. 694. [Jan. 27, 1885.]

HELD by the Full Bench (Mahmood, J., dissenting), that s. 582 of the Civil Procedure Code does not make the provisions of chap. 21, relating to the death of a defendant in a suit, applicable to the death of a plaintiff-respondent in an appeal, so as to render it

obligatory on the defendant-appellant to make an application to the Court praying that the legal representatives of the deceased be made parties to the appeal; and that, where there has been no such application, the appeal does not abate. *Per Petheram, C.J.*—The words, “so far as may be,” in the second clause of the first para. of s. 582, must be construed as meaning “so far as may be necessary to carry into effect the remedies contemplated by chap. 21.” *Per Mahmood, J., contra*, that the object of s. 582 of the Civil Procedure Code is to obviate the necessity of repeating the provisions of chap. 21 so as to make them applicable to appeals, and the words “appellant” and “respondent” as used in the section include both plaintiffs and defendants in an appeal; that the whole Code maintains the analogy between the position of a respondent and that of a defendant for the purposes of being impleaded and brought before the Court; that chap. 21 applies to cases where a plaintiff-respondent has died; and that, in such a case, and where no application has been made, within the period prescribed therefor, praying that the legal representatives of the deceased be made parties in his place, the appeal abates. Also *per Mahmood, J.*—The word “defendant” as used in art. 171B of the Limitation Act (XV. of 1877) must be taken to include a respondent, whether plaintiff or defendant in the suit. *Lakshmitai v. Balkrishna (I. L. R., 4 Bom. 654), Rajmonee Dabee v. Chandar Kant Saindel (I. L. R., 8 Cal. 440), and Bai Javer v. Hathising Keshising (I. L. R., 9 Bom. 56), referred to.*—*Narain Das v. Lajja Ram, I. L. R., 7 All. 693. [Feb. 21, 1885.]*

ART. 171B, sch. 2, of the Limitation Act (XV. of 1877), applies to applications to have the representative of a deceased defendant-respondent made a respondent.—*Baldeo v. Bismillah Begam, I. L. R., 9 All. 118. [Nov. 25, 1886.]*

369. The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may, notwithstanding, be proceeded with to judgment, and where the decree is against a female defendant, it may thereupon be executed against her alone. Extending to Provincial S. C. Courts.

If the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband where the husband is by law entitled to the subject-matter of the decree.

370. The bankruptcy or insolvency of a plaintiff in any suit which his assignee or the receiver appointed under section 351 might maintain for the benefit of his creditors shall not bar the suit, unless such assignee or receiver declines to continue the suit and to give security for the costs thereof within such time as the Court may order. Ditto.

If the assignee or receiver neglect or refuse to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's bankruptcy or insolvency, and the Court may dismiss the suit and award to the defendant the costs which he has incurred in defending the same, to be proved as a debt against the plaintiff's estate.

371. When a suit abates or is dismissed under this chapter, no fresh suit shall be brought on the same cause of action. Ditto.

But the person claiming to be the legal representative of the deceased or bankrupt or insolvent plaintiff may apply for an order to set aside the order for abatement or dismissal; and, if it be proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

UPON the death of a sole plaintiff, if no application to revive is made within sixty days from the date of the plaintiff's death, the suit abates. But the Court may, under Act X. of 1877, s. 371, revive the suit on the application of the legal representative of the plaintiff within three years from the time when the right to apply accrues, if he can shew that he was prevented by sufficient cause from continuing the suit.—*Bhojrub Dass Johurry v. Doman Thakoor*, I. L. R., 5 Cal. 139. [May 12, 1879.]

WHERE a suit was declared abated in 1868 under s. 102 of Act VIII. of 1859 for non-prosecution by the representative of a deceased plaintiff, held that the Civil Procedure Code, s. 271, was no bar to a fresh suit instituted in 1880 on the same cause of action.—*Palkunath Ramen Menon v. Mullankaji Sri Kumaran Nambudri*, I. L. R., 3 Mad. 31. [April 8, 1881.]

THE defendants attached certain property, which, the plaintiffs alleged, belonged to them. The plaintiffs preferred a claim to the property under s. 246 of Act VIII. of 1859: this claim was disallowed on the 15th August 1877. In June 1878, the plaintiffs brought a suit to establish their title to the property attached, and for confirmation of possession. Pending this suit, the principal defendant died, and the plaintiffs applied for an order to substitute certain persons as defendants. The Court thereupon directed the issue of a summons on the defendants proposed by the plaintiffs to appear and defend the suit; but the plaintiffs failing to pay the costs of the service of this summons, the suit was dismissed on the 14th March 1879. On the 4th March 1880, the plaintiffs again brought a suit to establish their title to the same property, and for confirmation of possession. Held that the order of the 15th August 1877, not being an order passed under s. 283 of Act X. of 1877, art. 11 of sch. 2. of Act XV. of 1877 did not apply, but that art. 120 of sch. 2 was applicable; and that, as the first suit had not been dismissed upon the merits, the plaintiffs were entitled to maintain the second suit.—*Bessessur Bhugut v. Murli Sahu*, I. L. R., 9 Cal. 163. [July 22, 1882.]

THE plaintiff died off the 28th August 1883, and in December 1884, letters of administration to his estate were granted to the Administrator-General. The defendant died in June 1884, leaving a widow and one son him surviving. By his will he appointed two executors. On the 3rd February 1885, the Administrator-General took out a summons to revive the suit. Held that, notwithstanding the provisions of s. 365 of the Civil Procedure Code (Act XIV. of 1882) and of the Limitation Act (XV. of 1877), it was competent for a Judge in chambers to revive the suit by making an order for abatement under s. 366 of the Code, coupled with an order under s. 371 setting aside the order for abatement.—*Fulvahu v. Goculdás Vallabhdás*, I. L. R., 9 Bom. 275. [Mar. 27, 1885.]

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372. In other cases of assignment, creation, or devolution of any interest pending the suit, the suit may, with the leave of the Court, given either with the consent of all parties or after service of notice in writing upon them, and hearing their objections (if any), be continued by or against the person to whom such interest has come, either in addition to, or in substitution for, the person from whom it has passed, as the case may require.

A SUIT was instituted by the trustee appointed under a will against the executrix for the purpose of having the trusts of the will carried into execution. A decree was made and certain directions were given for the purpose of having a scheme settled by which the trusts were to be carried out; but before the scheme was finally settled and approved, and while the proceedings were pending, the case was struck out of the board for want of prosecution. Subsequently both the plaintiff and defendant died. The heirs of the plaintiff then instituted a suit against the Administrator-General as representing the estate of the defendant for carrying the trusts into execution, and prayed that their suit might be considered as supplemental to the original one. Held that the original suit, though no longer upon the board, was capable of revival, and that, if no person were living whose consent might be obtained, or to whom notice might be given, the Court might give leave without any such consent or notice, and that the proper course to pursue was to allow the plaintiffs to amend their plaint by putting it in the form of a petition under Act X. of 1877, s. 372, the defendant being at liberty to put in any answer which he might have done, if the proceeding had been by petition in the first instance.—*Gocool Chunder Gossamee v. Administrator-General of Bengal*, I. L. R., 5 Cal. 726. [Feb. 5, 1880.]

THE words "pending the suit," in Act X. of 1877, s. 372, relate to a suit in which no final order has been made.—*Gocool Chunder Gossamee v. Administrator-General of Bengal*, I. L. R., 5 Cal. 726. [Feb. 5, 1880.]

AFTER a decree had been made in a suit, the case was, in 1875, struck out of the board for want of prosecution. No steps were taken to have it restored. In 1879, both the plaintiff and the defendant died. In the same year the heirs of the plaintiff instituted a suit against the administrator of the defendant for the purpose of having the decree in the original suit carried out. This suit was dismissed by the Court of first instance under Act X. of 1877, s. 13; but the Appellate Court, holding that the original suit was subsisting, and might be re-constituted, directed that the plaintiffs should be allowed to amend their plaint by putting it into the form of a petition under s. 372 of the same Act. On a petition by the plaintiffs praying that the original suit might be revived and restored to the board, *held* that the application was not barred under sch. 2, art. 178. Even if art. 178 was applicable, the application would not be barred, limitation running from the time when the suit was allowed to be re-constituted.—Govind Chunder Goswami v. Rungun Money, I. L. R. 6 Cal. 60. [Mar. 18, 1880.]

IN a suit for the recovery of land against a sole defendant, the latter died before the hearing. Sixty-three days after the death of the defendant, the plaintiff applied to the Court to enter on the record the legal representative of the deceased defendant. On the 22nd of November 1880, the Court rejected the application under the provisions of Act XV. of 1877, sch. 2, cl. 171B, and ordered the suit to abate. On the same day the plaintiff applied to the Court to set aside the order directing the suit to abate, but this application was also rejected on the 20th of September 1881. On appeal to the High Court, *held* that no appeal lay against the order of the 20th of September 1881, and that an appeal against the order of the 22nd of November 1880 was out of time; but that the High Court would take cognizance of the case under s. 622 of the Code of Civil Procedure. *Held* also that the application which was rejected on the 22nd of November 1880 was an application under s. 372, and not under s. 368 of the Code of Civil Procedure, and that the applicant was entitled to make the application within three years, as allowed by Act XV. of 1877, sch. 2, cl. 178. Gooool Chunder Gossamee v. Administrator-General of Bengal (I. L. R., 5 Cal. 726; S.C., 5 C. L. R. 108) referred to.—Benode Mohini Chowdhra v. Sharat Chunder Dey Chowdhry and others, I. L. R., 8 Cal. 837. [April 14, 1882.]

THE "cases of assignment, creation, or devolution" of any interest pending a suit, contemplated by s. 372 of the Civil Procedure Code, are those in which "the person to whom such interest has come" is arrayed on the same side in the suit as "the person from whom it has passed." *Held*, therefore, that a compromise in a suit for land between the plaintiff and one of the defendants, whereby the latter consented to a decree being given to the former for half the land, was not a "case of assignment" of an interest in such land within the meaning of that section.—Radha Prasad Singh v. Rajendra Kishore Singh, I. L. R., 5 All. 209. [Sep. 14, 1882.]

AT an auction-sale held in execution of a decree passed against one Ganpat Anandráv certain property put up for sale was purchased by one Khán Mahomed, the husband of the opponent. Subsequently Krishnaráv Anandráv, the brother of Ganpat Anandráv, brought a suit against the opponent to establish his right to the property purchased by the opponent's husband. On the 17th February 1882, he obtained a decree declaring that he (Krishnaráv Anandráv) was entitled to a half-share of the property in dispute, and an order was made that he should have joint possession with the opponent of one moiety of the property. On the termination of the above suit, which had been brought by Krishnaráv in *forma pauperis*, he was required to pay the court-fees. For that purpose he procured an advance of Rs. 290 from the applicant on the security of the moiety of the property which was awarded to him by the decree. He passed a deed of sale to the applicant on the understanding that the property should be re-conveyed to him by the applicant on the repayment of the advance with interest. In the meantime cross appeals were filed against the above-mentioned decree passed in favour of Krishnaráv, and at the hearing of the appeal the lower Appellate Court varied the decree of the Subordinate Judge, holding that Krishnaráv Anandráv was entitled to the possession of the property as sought for. From this decree the opponent preferred a second appeal to the High Court, which, at the time of this application, was still pending. Before the hearing of the appeal, Krishnaráv Anandráv died, and the applicant thereupon applied to have his name placed on the record as respondent. *Held* that the applicant was entitled to be made a party. The analogy of s. 368 is to be extended generally to appeals, and the party appealing may choose his own respondent as representative of deceased. The more specific rule prescribed in that section must prevail, in the cases to which it is exactly applicable, over the more general rule in s. 372. But the rule in s. 368 may well be intended for the case in which the death, and death only, of the defendant constitutes the change of circumstances for which it was thought necessary to provide; but where there has been, not only the death of the respondent, but an alleged prior conveyance to him of the property awarded by the decree ap-

pealed against, there is a fact in addition to the fact contemplated by s. 368, and the rule in s. 372, being alone sufficiently inclusive, must apply. An appellant may determine who shall be respondent, but not that any particular person shall not be a respondent. The choice of respondents made by the appellant may be defective through ignorance or fraud, and the real representative of the decree-holder cannot justly be refused an opportunity of maintaining the decision which it is sought to upset.—*Rajáran Bhágwat v. Jibai*, I. L. R., 9 Bom. 151. [Sep. 15, 1884.]

CHAPTER XXII.

OF THE WITHDRAWAL AND ADJUSTMENT OF SUITS.

Extending to
Provincial S.
C. Courts,

373. If, at any time after the institution of the suit, the Court is satisfied,

Power to allow plaintiff to withdraw with liberty to bring fresh suit.

on the application of the plaintiff, (a) that the suit must fail by reason of some formal defect, or (b) that there are sufficient grounds for permitting him to withdraw from the suit, or to abandon part of his claim with liberty to bring a fresh suit for the subject-matter of the suit or in respect of the part so abandoned, the Court may grant such permission on such terms as to costs or otherwise as it thinks fit.

If the plaintiff withdraw from the suit, or abandon part of his claim, without such permission, he shall be liable for such costs as the Court may award, and shall be precluded from bringing a fresh suit for the same matter or in respect of the same part.

Nothing in this section shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

THE plea that the plaintiff had improperly been permitted to withdraw from a former suit with liberty to bring the present one, which had not been taken in the lower Courts, and was not taken in the memorandum of second appeal, was not permitted to be urged at the hearing of the second appeal. *Quere.*—Whether under s. 373 of Act X. of 1877 the Court ought to permit the plaintiff to withdraw from the suit with liberty to bring a fresh suit on the ground that the defence to the suit was such that the suit must fail if proceeded with?—*Zahur-un-nissa v. Khuda Yar Khan*, I. L. R., 3 All. 528. [Feb. 16, 1881.]

THE proviso in the 3rd clause of s. 373 of the Code of Civil Procedure does not deprive the Court of power to permit one of several co-plaintiffs to withdraw unconditionally from a suit, even though his co-plaintiffs do not consent to his withdrawal.—*Mohamaya Chaudhrai v. Durga Churn Shaha*, 9 C. L. R. 332. [Aug. 2, 1881.]

WHEN a plaintiff sues to recover possession of property on the allegation that he had purchased it with his own money, and the suit is dismissed in the Court of first instance, the Court of appeal is not justified in giving the plaintiff a decree for a portion of the property, on the ground that the whole was the property of a joint Hindu family in which the plaintiff was a co-sharer. A claim to attached property made under Act VIII. of 1859, s. 246, was dismissed, and the claimant, in the year 1875, instituted a regular suit against the decree-holder under the provisions of that section. The decree-holder then released the property from attachment, and the plaintiff withdrew his suit. The same property was afterwards, in the year 1878, attached again, and sold in execution of the same decree. Held that a subsequent suit for possession of the property against the purchaser at the execution-sale was not barred under s. 97 of Act VIII. of 1859. *Eshen Chunder Singh v. Shama Churn Bhutta* (11 Moore's L. A. 7) cited.—*Mukhoda Soondury Dasi v. Ragn Churn Karmokary*, I. L. R., 8 Cal. 871. [May 5, 1882.]

HELD by the Full Bench (Stuart, C.J., dissenting).—That the Courts of Revenue in the North-Western Provinces, in those matters of procedure upon which the Rent Act (XII. of 1881) of those Provinces is silent, are governed by the provisions of the Civil Procedure Code. The principle of decision in *Nilmoni Singh Deo v. Taranath Mukerjee* (I. L. R., 9 Cal. 295) followed. Held, therefore, that the procedure provided by ss. 43 and 373 of the Civil Procedure Code is applicable to suits tried under the N. W. P. Rent Act, 1881.—*Madho Prakash Singh v. Murli Manohar*, I. L. R., 5 All. 406. [Mar. 17, 1883.]

THE Code of Civil Procedure (Act XIV. of 1882) does not allow of a plaint or memorandum of appeal being returned to the plaintiff or appellant after a case has been heard on its merits, and just as the plaintiff or appellant discovers that the Court is about to pronounce an adverse decision. There is no provision in the Code for the return of a plaint to a plaintiff after it has been admitted, and the court-fee stamps thereon cancelled. Even if the Code allowed the High Court to return a plaint after the court-fee stamps have been cancelled, the plaint could not be again legally presented in any Court without new stamps being affixed to it. The Executive Government alone have power to remit court-fees, and no Court or Judge has legal authority to admit a plaint which bears only cancelled stamps, or to direct a subordinate Court to admit such a document.—*Jagjivan Javherdas Seth v. Magdum Ali*, I. L. R., 7 Bom. 487. [Aug. 16, 1883.]

AN order under s. 373 of the Civil Procedure Code, permitting the withdrawal of a suit, with liberty to bring a fresh one, not being made appealable by s. 588, is being a "decree" within the meaning of s. 2, is not appealable. When the plaintiff in a suit applies for permission to withdraw it with liberty to bring a fresh one, such permission should not be granted without the defendant being served with notice to show cause why such permission should not be granted. L, claiming as heir to H, a deceased Hindu, sued K, his widow, and G, a minor, represented by his mother and guardian, B, to have the adoption by K of G set aside, and for certain other reliefs. The matters in difference in the suit were referred to arbitration, and an award was made in favour of the defendants. The plaintiff preferred objections to the award. Before these were disposed of, K died. The Court of first instance subsequently allowed the objections, and set aside the award. The minor defendant then applied to the High Court for revision of the order setting aside the award. This application was rejected on the ground that the order might be impugned on appeal from the decree in the suit. The plaintiff subsequently applied for permission to withdraw the suit, with liberty to bring a fresh one, on the ground that, K having died, he was entitled to possession of the immoveable property left by H. This permission was granted. The minor defendant applied to the High Court for revision. Held that it might have been a very good ground for allowing the plaintiff to withdraw the suit that K, the adoptive father of the minor defendant, had died *pendente lite*, had no arbitration-proceedings taken place in the course of the suit; but when the parties had referred their differences to arbitration, and an award had been made in favour of the defendant, and had been set aside, and an application for revision of the order setting it aside had been refused, on the ground that the matter could be made the subject of appeal from the final decree in the suit, permission to withdraw the suit and bring a fresh one should not have been granted. The minor defendant might be seriously prejudiced by such a course, and the suit had not abated against him by the death of K, while on the other hand a decree in the suit, if in his favour, would decide the litigation, and, if in favour of the plaintiff, would not prevent his bringing a suit for possession on the separate cause of action which had arisen. *Stahlschmidt v. Walford* (L. R., 4 Q. B. D. 217) referred to. The High Court refused to allow the plaint in the suit to be amended by the addition of a claim for possession of the property left by H.—*Kalián Singh v. Lekhraj Singh*, I. L. R., 6 All. 211. [Feb. 4, 1884.]

WHERE a Court has reason to believe that a suit is lawfully brought by a party who has a right to bring it on behalf of a minor, any withdrawal of the suit by that party would have precisely the same effect as the withdrawal of a suit by a person of full age. But where a person acting for a minor has fraudulently withdrawn the minor's suit under s. 97 of Act VIII. of 1859 (corresponding with s. 373 of Act XIV. of 1882), without obtaining leave to bring a fresh suit, and by such withdrawal an absolute statutory prohibition is imposed on the minor from bringing a fresh suit, it is open to the minor to relieve himself from the consequences of the fraud in one of three ways: *viz.*, (1) by an application to the Court in the suit in which the withdrawal took place; (2) by a regular suit to set aside the judgment founded upon the withdrawal; or (3) by bringing a fresh suit for the same purpose, and setting up the fraud as an answer to the statutory bar.—*Eshan Ghundra Safooi v. Nuudamoni Dasee*, I. L. R., 10 Cal. 357. [Feb. 5, 1884.]

THE plaintiffs, who were an English joint-stock company registered under the English Companies' Act of 1862, sued the defendant, as a past member of the bank, upon a balance-order of the High Court of Justice in England, dated 24th February 1881, to recover the sum of £678-8. The balance-order recited that it was made upon the application of the official liquidator of the bank, and that there had been no appearance on behalf of the contributories. The defendant pleaded that he had not received notice that his name was about to be placed on the list of contributories, or notice of the application of the official liquidator recited in the balance-order, and he contended that he was not bound

by, or liable under, that order. He further pleaded (and it was admitted) that the order for winding up the plaintiffs' bank was in July 1866; that he had filed his petition in insolvency on the 19th November 1866, and had obtained his discharge under s. 60 of the Indian Insolvent Act (Stat. 11 and 12 Vic., c. 21) on the 30th September 1867; and he contended that by that order he was discharged from liability. *Held*, upon the evidence, that service upon the defendant of the various notices was sufficiently proved. *Held* also that, although the defendant's insolvency and his discharge under s. 60 of the Indian Insolvent Act, which was subsequent to the order for the winding up of the bank, might have absolved him from further liability to the plaintiffs, and, if pleaded in the Court in England, might have prevented his being placed on the list of contributories, yet that the Court could not, in this suit, give effect to the defendant's discharge. The present suit was a suit upon a foreign judgment, and the defendant could not now be permitted to plead a defence which he had an opportunity of pleading in the foreign Court. In August 1882, the plaintiffs had filed a previous suit against the defendant to recover the said sum of £678-3. That suit was based upon a call-order, dated 11th November 1880, which it sought to enforce. By an order made in that suit on 7th April 1883, the plaintiffs were permitted to withdraw it, with liberty to bring a fresh suit for the same cause of action. The present suit, to enforce a balance-order dated the 24th February 1881, was filed on 11th February 1885. It was contended on behalf of the defendant that the present suit being based upon an order which was in existence at the date of the previous suit, the plaintiffs could not now sue upon it: that the plaintiffs could not abandon the title upon which they claimed in the first suit, and set up a different title in the second. *Held* that the plaintiffs were not precluded from bringing the second suit upon the balance-order, and that the suit was properly framed.—*London, Bombay, and Mediterranean Bank v. Burjorji Sorabji Lywalla*, I. L. R., 9 Bom. 346. [Mar. 31, 1885.]

WHERE, on appeal from a decree dismissing a suit, the Appellate Court, being of opinion that the plaint was informally drawn, and its allegations regarding the cause of action not sufficiently specific, gave the plaintiff permission, under s. 373 of the Civil Procedure Code, to withdraw the suit, with leave to institute a fresh one, *held* that the order of the Appellate Court was a "decree" within the meaning of the Civil Procedure Code, and afforded a proper ground of second appeal to the High Court. *Per* Straight, J., that, with reference to the terms of s. 582 of the Civil Procedure Code, the Appellate Court had power to avail itself of the provisions of s. 373, and, therefore, had a discretion to make the order allowing the plaintiff to withdraw the suit and institute a fresh one. *Gregory v. Doolee Chand Kandary Mull* (14 W. R., O. J., 17) and *Khaloon Koonwar v. Hurdoot Narain Singh* (20 W. R. 163) referred to. Also *per* Straight, J., that it could not be said that the Appellate Court in this case had exercised its discretion so unreasonably or erroneously as to compel the interference of the High Court with it in appeal. *Per* Tyrrell, J., that it might be taken that the Appellate Court, though not so stating in express terms, meant to set aside, and did set aside, the decree of the Court of first instance, regarding it as a decree which could not have been rightly made, and must be set aside, by reason of the radical defect in the plaint, the basis of the suit and the decree; and that, in this view, there was no legal objection to the exercise by the Appellate Court of the discretionary power of chap. 22 of the Code.—*Ganga Ram v. Data Ram*, I. L. R., 8 All. 82. [Dec. 18, 1885.]

THE wording of s. 21 of the Specific Relief Act (I. of 1877) is wide enough to cover contracts to refer any matter which can legally be referred to arbitration, and one of such matters is a suit which is proceedings in Court. The parties to a suit, while it was pending, agreed to refer the matters in difference between them to arbitration, and for this purpose applied to the Court for an order of reference under s. 606 of the Civil Procedure Code. The application was granted, arbitrators were appointed, and it was ordered that they should make their award within one week. Before the week had expired, and before any award had been made, one of the parties made an *ex parte* application under s. 373 of the Code for leave to withdraw from the suit with liberty to bring a fresh suit in respect of the same subject-matter. The application was granted, the suit struck off, and a fresh suit instituted in pursuance of the permission thus given by the Court. In defence to this suit it was pleaded that the suit was barred by s. 21 of the Specific Relief Act (I. of 1877). *Held* that the Court in the former proceedings had no power to revoke the order of reference prior to award except as provided by s. 510 of the Code; that consequently the Court's order under s. 373 was *ultra vires* if involving such revocation, or, if not involving it, left the order of reference still in force; that in either alternative the suit was barred by s. 21 of the Specific Relief Act; and that it was immaterial that the period within which the award was to be made expired before the bringing of the second action. *Per* Tyrrell, J., that the suit was barred by the second clause of s. 373, the Court having had no jurisdiction to pass the order under that section, or, having referred

the suit to arbitration, to restore the suit to its file, and treat it as awaiting the Court's decision.—*Stephenson v. Deodat*, I. L. R., 9 All. 168. [Dec. 17, 1886.]

On the 5th September 1874, R, a Hindu, and his sons, borrowed Rs. 5,000 from V, and mortgaged to him certain land, items 1, 2, and 3. On the 7th September 1874, V borrowed Rs. 5,000 from R N, and mortgaged his rights in items 1 and 2 and land of his own to R N. In 1877 R N bought, at a sale in execution of a decree against B, the share of R in the said items 1 and 2, subject to the mortgage created by R on 5th September 1874, and to another mortgage created by R on 11th January 1875. In 1880, R N sued V and the sons of R for arrears of interest due under his mortgage-bond. This suit was withdrawn with liberty to bring a fresh suit for the principal and interest due under the bond. In 1885, R N sued the sons of R and V to recover principal and interest due under his mortgage-bond. V pleaded that, as R N had bought V's share in items 1 and 2, subject to the mortgages created by him, R N's rights as mortgagee were merged in his rights as purchaser. R's sons pleaded, *inter alia*, that the suit was barred by the provisions of ss. 43 and 373 of the Code of Civil Procedure. *Held* that the claim of R N was neither merged nor barred.—*Venkata v. Ranga*, I. L. R., 10 Mad. 160. [Jan. 11, 1887.]

In a suit brought in a District Munsif's Court to declare certain land liable to be sold in execution of a decree for more than Rs. 2,500, the defendants pleaded that the Court had no jurisdiction. The Munsif allowed the plaintiff to amend the plaint by stating that he abandoned his claim to execute the decree against the land for more than Rs. 2,500. On appeal, the District Judge held that the plaint could not be amended after the first hearing. *Held*, on appeal to the High Court, that the claim was not one which could be amended so as to bring the suit within the pecuniary jurisdiction of the District Munsif.—*Aunaji v. Rana Kuru*, I. L. R., 10 Mad. 152. [Jan. 19, 1887.]

374. In any fresh suit instituted on permission granted under the last preceding section, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought. Extending to Provincial S. C. Courts.

THE rule laid down in s. 374 of the Code of Civil Procedure (Act X. of 1877), that, where a suit is withdrawn with leave to bring a fresh suit, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought, applies to applications for execution; and, therefore, in counting the time of three years prescribed by the Limitation Act (XV. of 1877), sch. 2, art. 179, cl. 4, an application allowed to be withdrawn must be discarded as if it had never been presented. The rule created by s. 374 of the Code of Civil Procedure is, in such a case, not removed by s. 179 of the Limitation Act, as causes for which the withdrawal of a suit or application may be permitted are not causes "of a like nature" with defect of jurisdiction.—*Pirjádé v. Pirjádé*, I. L. R., 6 Bom. 681. [Sep. 5, 1882.]

THE holder of a decree for money, dated the 7th June 1879, applied, on the 20th July 1880, for execution thereof, but it appeared that in certain particulars the decree required correction, and it was therefore ordered, at the request of the pleader for the decree-holder, that the application should be dismissed, and the decree returned to him for amendment. The next application for execution of the decree was made by the decree-holder on the 19th February 1883. *Held* that the application of the 20th July 1880 having been put in and afterwards taken back by the decree-holder, the proceeding became, to all intents and purposes, as though no application had been made; that therefore it could have no effect as an application made in accordance with law for execution within the meaning of art. 179, sch. 2, of the Limitation Act; that applying the rule contained in s. 374 of the Civil Procedure Code, in accordance with s. 647, to the application for execution of the 19th February 1883, the question of limitation must be determined as if the first application had never been filed; and that the application now in question was consequently barred by limitation. *Ramanandan v. Periatambi* (I. L. R., 6 Mad. 250) dissented from. *Pirjádé v. Pirjádé* (I. L. R., 6 Bom. 681) referred to.—*Kifayat Ali v. Ram Singh*, I. L. R., 7 All. 359. [Jan. 24, 1885.]

THE plaintiff obtained a decree in 1874, and applied for its execution, first on the 4th of August 1875, then on the 6th of July 1878, and again on the 23rd of July 1880. The third application was withdrawn with permission to apply again. On the 30th November 1882, the plaintiff made his present application. *Held* that the present application was not time-barred. The rule laid down in s. 374 of the Civil Procedure Code (Act XIV. of 1882)—that where a suit is withdrawn with leave to bring a fresh suit, the

plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought—does not apply to applications for execution.—*Táráphand Megráj v. Káshináth Trimbak*, I. L. R., 10 Bom. 62. [July 21, 1885.]

Extending to
Provincial S.
C. Courts.

375. If a suit be adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfy the plaintiff in respect to the whole or any part of the matter of the suit, such agreement, compromise, or satisfaction, shall be recorded, and the Court shall pass a decree in accordance therewith so far as it relates to the suit, and such decree shall be final, so far as relates to so much of the subject-matter of the suit as is dealt with by the agreement, compromise, or satisfaction.

AFTER the hearing of the suit had begun, the plaintiffs and defendants came to an agreement, by which they settled all the matters in dispute between them in the suit. The agreement was in writing, and dealt in one clause with the dispute, the subject-matter of the suit, and in a second clause with another dispute of long standing between the parties, with which the suit had nothing to do. The plaintiffs subsequently objecting to consent to a decree being taken in terms of the first clause of the agreement, the defendants took out a rule nisi, calling on the plaintiffs to show cause why the agreement should not be recorded in Court, and why the Court should not pass a decree in accordance therewith, under the provisions of s. 375 of the Civil Procedure Code (Act XIV. of 1882). The rule was argued on affidavits on either side, the plaintiffs objecting that the above section did not apply to such a case as this, and that, in any case, the matter could not be decided on affidavits, but evidence must be gone into. *Held* that s. 375 gave the Court the power to deal with such a case as this in the manner required, and that this was a proper case in which to exercise such a power; and that, in the circumstances of this case, no definite procedure having been enjoined by the Code, the matter might properly be decided on affidavits. Rule made absolute accordingly.—*Ruttonsey Láji v. Pooribái*, I. L. R., 7 Bom. 304. [June 15, 1883.]

FOR the purpose of setting aside a decree passed in pursuance of a compromise come to out of Court, there are two available modes of procedure—(1) by suit; (2) by a review of the judgment sought to be set aside; the latter being the more regular mode of procedure. *Láji Sahu v. Collector of Tirhoot* (6 B. L. R. 649) *Mewah Lal Thakur v. Bhujun Jha* (13 B. L. R., Ap. 11) and *Gilbert v. Endean* (I. L. R. 9 Cal. D 259), followed.—*Aushootoel Chandra v. Taraprasanna Roy*, I. L. R., 10 Cal. 12. [April 24, 1884.]

AFTER suit filed by the plaintiff against several defendants, one of whom was an infant a petition of compromise, entered into between the adult parties, was filed in Court. The petition stated the terms of arrangement, and also that an application would be made by the guardian of the minor praying the Court to allow the compromise to be carried out on his behalf. Ten days after the petition of compromise was filed, the first defendant and the plaintiff presented petitions to the Court withdrawing from the compromise, and praying that the suit should proceed. The second defendant presented a petition praying that the compromise should be recorded, and a decree passed according to its terms. The Court made a decree in accordance with the prayer of the second defendant's petition. The first defendant appealed. *Held* that an appeal lay, and that the lower Court was wrong in enforcing the compromise at the instance of the second defendant. *Seemle*, that s. 375 of the Code of Civil Procedure merely covers cases in which all parties consent to have the terms entered into carried out, and judgment entered up. *Ruttonsey Láji v. Pooribái* (I. L. R., 7 Bom. 304) questioned. *Hara Sundari Debí v. Kumar Dukkinessur Maia*, I. L. R., 11 Cal. 250. [Jan. 26, 1885.]

BY an agreement made in writing before the hearing, the parties to a suit entered into a compromise by which the plaintiff agreed, for consideration, to withdraw the suit. When the case came on for hearing, plaintiff refused to fulfil his promise. The defendant having produced the agreement, the Munsif held that it must be enforced, and dismissed the suit. On appeal, the District Judge held that the agreement could not be treated as a compromise, as the plaintiff did not consent, and remanded the suit. *Held* that the agreement could be enforced.—*Ruttonsey Láji v. Pooribái*, (I. L. R., 7 Bom. 304) approved.—*Karuppan and others v. Rámasámi*, I. L. R., 8 Mad. 482. [April 17, 1885.]

THE parties to an appeal, in which an issue had been remitted for trial to the Lower Court, having presented a petition to the Lower Court, stating that the suit had been compromised and the terms of the compromise, requested the Lower Court to move the Appellate Court to pass a decree in accordance with such terms. Before a decree was passed,

one of the parties objected to the compromise being accepted. Held that it was open to the Court, such objection notwithstanding, to pass a decree in accordance with the agreement. *Ruttonjee Lalji v. Pooribai* (I. L. R., 7 Bom. 304) and *Karuppan v. Ramesami* (I. L. R., 8 Mad. 482) followed; *Hara Sundari Debi v. Kumar Dukhiresur Malia* (I. L. R., 11 Cal. 250) observed upon. An oral agreement by the parties to a suit, that a decree be passed creating a charge on immoveable property above Rs. 100 in value, is not rendered inoperative by s. 59 of the Transfer of Property Act. The parties to an appeal applied to the Court to pass a decree in accordance with the terms of a compromise, and before decree was passed, one of the parties objected to such decree being passed on the ground that certain conditions precedent to be performed by the other party had not been performed. The Court (this being denied by the other party) called for affidavits in proof of the terms of the agreement of compromise, and, these being found not to be sufficiently conclusive, directed the Lower Court to take evidence on the point.—*Appasami v. Mathkum* I. L. R., 9 Mad. 103. [Sep. 28 1885.]

THE only compromise which a Court can in any case be bound under s. 375 of the Code of Civil Procedure to enforce, is one which adjusts, wholly or in part, the suit; matters going beyond the suit, cannot, if included in a compromise, be so enforced. A Court refusing to grant a decree on a compromise going beyond the suit cannot, however grant a decree modifying the terms of the proposed compromise, but must leave the parties to proceed with the suit as they may be advised.—*Fajaleh Ali Miah v. Kamarudden Bhuya*. I. L. R., 13 Cal. 170. [July 10-1886.]

CHAPTER XXIII.

OF PAYMENT INTO COURT.

376. The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim. Extending to Provincial S. C. Courts.

377. Notice in writing of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application. Ditto.

378. No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof. Ditto.

379. If the plaintiff accept such amount only as satisfaction in part of his claim, he may prosecute his suit for the balance; and if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff must pay the costs of the suit incurred after the deposit, and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim. Ditto.

If the plaintiff accept such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed, and the Court shall pass judgment accordingly, and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

Illustrations.

(a.) A owes B Rs. 100. B sues A for the amount, having made no demand for payment, and having no reason to believe that the delay caused by making a demand

would place him at a disadvantage. On the plaint being filed, A pays the money into Court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(b.) B sues A under the circumstances mentioned in illustration (a). On the plaint being filed, A disputes the claim. Afterwards A pays the money into Court. B accepts it in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

(c.) A owes B Rs. 100, and is willing to pay him that sum without suit. B claims Rs. 150, and sues A for that amount. On the plaint being filed, A pays Rs. 100 into Court, and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

CHAPTER XXIV.

OF REQUIRING SECURITY FOR COSTS.

Extending to
Provincial S.
C. Courts.

380. If, at the institution or at any subsequent stage of a suit, it appears

When security for costs may be required from plaintiff at any stage of suit.

to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of British India, and that such plaintiff does not, or that no one of such plaintiff's does, possess any sufficient immoveable property within British India independent of the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time to be fixed by the order, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

THE meaning to be given to the word "residence" in legislative enactments depends upon the intention of the Legislature in framing the particular provision in which the word is used. The "residence" intended in s. 380 of the Civil Procedure Code (Act X. of 1877), is residence under such circumstances as will afford a reasonable probability that the plaintiff will be forthcoming when the suit is decided.—*Mahomed Shuffi v. Laldin Abdula*, 1. L. R., 3 Bom. 227. [July 30, 1878.]

HELD that a plaintiff, being a resident in Wadhwan, in Kathiwar, and possessed of immoveable property in the cantonment there, could not be required to give security for costs under s. 380 of the Civil Procedure Code (Act XIV. of 1882), the cantonment of Wadhwan being within the limits of British India.—*Triccam Panachand v. Bombay, Baroda, and Central India Railway Company*, 1. L. R., 9 Bom. 214. [Mar. 17, 1885.]

Ditto.

381. In the event of such security not being furnished within the time

Effect of failure to furnish so fixed, the Court shall dismiss the suit, unless the plaintiff or plaintiffs be permitted to withdraw therefrom under the provisions of section 373.

THE definition of "decree" in s. 2 of the Civil Procedure Code means that where the proceeding of the Court finally disposes of the suit, so long as it remains upon the record, it is a "decree." *Held* by the Full Bench that an order passed under s. 381 of the Civil Procedure Code, dismissing a suit for failure by the plaintiff to furnish security for costs as ordered, was the decree in the suit, and appealable as such, and consequently was not open to revision by the High Court under s. 622 of the Code.—*Williams (J. R.) v. Brown (T. A.)*, 1. L. R., 8 All. 108. [Jan. 23, 1886.]

Ditto

382. Whoever leaves British India under such circumstances as to afford

Residence out of British India.

reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of British India within the meaning of section 380.

CHAPTER XXV.

OF COMMISSIONS.

A.—Commissions to examine Witnesses.

383. Any Court may, in any suit, issue a commission for the examination, on interrogatories or otherwise, of persons resident within the local limits of its jurisdiction, who are exempted under this Code from attending the Court, or who are, from sickness or infirmity, unable to attend it. Extending to Provincial S. C. Courts.

Cases in which Court may issue commission to examine witness.

384. Such order may be made by the Court either of its own motion, or on the application, supported by affidavit or otherwise, of any party to the suit, or of the witness to be examined. Ditto.

Order for commission.

385. The commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute the same. Ditto.

When witness resides within Court's jurisdiction.

Persons for whose examination commission may issue.

386. Any Court may, in any suit, issue a commission for the examination of— Ditto.

- (a) any person resident beyond the local limits of its jurisdiction ;
- (b) persons who are about to leave such limits before the date on which they are required to be examined in Court ; and
- (c) civil and military officers of Government, who cannot, in the opinion of the Judge, attend the Court without detriment to the public service.

Such commission may be issued to any Court, not being a High Court or the Court of the Recorder of Rangoon, within the local limits of whose jurisdiction such person resides, or to any pleader of a High Court whom the Court issuing the commission thinks fit to appoint.

The Court, on issuing any commission under this section, shall direct whether the commission shall be returned to itself or to any subordinate Court.

The issue of a commission for the examination of an absent witness, without notice to the opposite party, even if not illegal, is objectionable.—*Tarucknath Mookerjee and others v. Gouree Churn Mookerjee*, 3 W. R. 147. [July 20, 1865.]

TEMPORARY imprisonment beyond the jurisdiction of a Small Cause Court was held not to bar the jurisdiction of that Court in respect of defendants who formerly resided within its jurisdiction, and whose families continued to reside there, there being, moreover, nothing to show that the defendants had no intention of not returning to their former place of abode on the termination of their imprisonment. A Magistrate is not bound to execute a commission of a Small Cause Court directing him to take the evidence of prisoners in jail, in a case in which none of the circumstances existed authorizing that Court to issue the commission.—*Gopal Chunder Sircar v. Kurnodhar Moochee and others*, 7 W. R. 349. [April 6, 1867.]

A PARTY to a suit has a legal right to apply to a Court for a summons to a witness, or for a commission to examine a witness. The Court should grant the application as a matter of course, without considering whether the applicant can derive any advantage therefrom.—*Huree Dass Hysack v. Meer Moazzum Hossein*, 15 W. R. 447. [April 26, 1871.]

AN application for the issue of a commission should be supported by some reason other than the mere distance of place of residence of the witness. If the witness is a stranger, a commission will be right and reasonable ; but not if he is a servant of the party applying.—*Amrith Nath Jha v. Dhunput Singh Bahadoor*, 20 W. R. 253. [July 10, 1873.]

Extending to
Provincial B.
C. Courts.

387. When any Court to which application is made for the issue of a commission to examine witnesses not within British India, commission for the examination of a person residing at any place not within British India is satisfied that his evidence is necessary, the Court may issue such commission.

UNDER s. 622 of the Code of Civil Procedure, interlocutory orders passed under s. 387 refusing applications for the issue of a commission to examine witnesses, or, under s. 130, directing the production of documents, cannot be revised.—*In re Nizam of Hyderabad*, I. L. R., 9 Mad. 256. [Feb. 22, 1886.]

Ditto.

Court to examine witness pursuant to commission.

388. Every Court receiving a commission for the examination of any person shall examine him pursuant thereto.

Ditto.

389. After the commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court out of which it issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto, and the evidence taken under it, shall (subject to the provisions of the next following section) form part of the record of the suit.

Ditto.

390. Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless

(a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead, or unable, from sickness or infirmity, to attend to be personally examined, or exempted from personal appearance in Court, or

(b) the Court, in its discretion, dispenses with the proof of any of the circumstances mentioned in the last preceding clause, and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

DOCUMENTS attached to the return of a commission, and identified with the documents referred to in the evidence, may be read at the hearing of the suit in which the commission issued, unless they have been objected to on being tendered in evidence before the commission. Objections to the admissibility of such documents cannot be taken at the hearing of the suit.—*Struthers (G. M.) v. Wheeler (C. E.)*, 6 C. L. R. 109. [April 14, 1880.]

Ditto.

Provisions as to execution and return of commissions to apply to commissions issued by foreign Courts.

391. The provisions hereinbefore contained as to the execution and return of commissions shall apply to commissions issued by

(a) Courts situate beyond the limits of British India and established by the authority of Her Majesty or of the Governor-General in Council, or

(b) Courts situate in any part of the British Empire other than British India, or

(c) Courts of any foreign country for the time being in alliance with Her Majesty.

B.—Commissions for local Investigations.

Ditto.

392. In any suit or proceeding in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne-profits or damages or annual nett-profits, and the same cannot be conveniently

conducted by the Judge in person, the Court may issue a commission to such person as it thinks fit, directing him to make such investigation and to report thereon to the Court :

Provided that, when the Local Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

393. The Commissioner, after such local inspection as he deems necessary, and after reducing to writing the evidence taken by him, shall return such evidence together with his report in writing, signed with his name, to the Court.

Extending to Provincial S. C. Courts.

The report of the Commissioner and the evidence taken by him, but not the evidence without the report, shall be evidence in the suit, and shall form part of the record ; but the Court, or, with the permission of the Court, any of the parties to the suit, may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to the manner in which he has made the investigation.

C. Commissions to examine Accounts.

394. In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit, directing him to make such examination or adjustment.

Ditto.

THE effect of the proviso to s. 3 of the Civil Procedure Code of 1877 taken in connection with the definition of the word "decree" in s. 2 is, that in all suits pending when that Code came into force, the practice and procedure to be followed down to the final result of such suits (i. e., when nothing remains to be done, but to execute the decree or to appeal from it), are the same as previously existed, but that in all subsequent proceedings in execution of the decree or in appeal from it, the practice and procedure provided by the Civil Procedure Code of 1877 are to be observed. The word "decree" in s. 3 of the Civil Procedure Code of 1877 means an order final in its nature, and does not include an interlocutory order, such as an order of reference to take accounts, although such order may in general be properly termed a 'decree,' and, therefore, a suit which has been referred by the Court to the Commissioner to take accounts is still in a stage "prior to decree" within the meaning of s. 3 of the Civil Procedure Code of 1877. *Hirji Jina v. Narain Mulji* (12 Bom. H. C. R. 129) distinguished. The general nature of a certificate or report—whether general or separate—by the Commissioner for taking accounts, is, that it should, in the case of a general certificate, comprise the result of all the proceedings under the decree or order of reference, or, in the case of a separate certificate or report, that it should comprise the result of some or one of such proceedings, and the Court is not bound to consider a certificate granted by the Commissioner unless he has certified what may be regarded as the result either of the whole inquiry referred to him or some branch or part of it. The power of the Commissioner to grant certificates, and of the Court to deal with motions made with reference thereto, considered. *Quære*—Whether, where a suit has been referred to the Commissioner for the purpose of having accounts taken, such accounts, in the absence of any direction in the decree or order of reference that stated or settled accounts are not to be disturbed, should not be taken without regard to any previous accounts stated or settled between the parties?—*Rustomji Burjorji v. Kesowji Naik*, I. L. R., 3 Bom. 161. [Aug. 13, 1878.]

In a suit for an account against an agent, the plaintiff stated that the defendant had not submitted proper accounts of his agency, and prayed that the defendant might be ordered to produce certain papers, and that, on failure to submit the accounts, he might be decreed to pay the plaintiff Rs. 1,200 by way of damages. The plaintiff also alleged that, in consequence of the defendant's negligence and mismanagement, the plaintiff believed that he had sustained a loss of Rs. 5,000, and prayed for a decree for this sum. *Held* that no decree could be made for the sums mentioned, or any other sum, until an account had been taken, and the amount due from the defendant ascertained. *Per* Field, J.—It is

the duty of an agent to render proper accounts to his employer irrespective of any contract to that effect. And he does not discharge that duty by merely delivering to his employer a set of written accounts without attending to explain them, and produce the vouchers by which the items of disbursements are supported. Method to be followed on taking accounts in the mufassal stated. If the taking of accounts by the Judge would occasion a waste of public time, he should resort to the provisions of ss. 394 and 395 of the Civil Procedure Code, and furnish the Commissioner with such part of the proceedings and such detailed instructions as may appear necessary. In order to enable an agent to prepare accounts to be furnished to his principal, he should be allowed to have reasonable access, at proper times and in the presence of responsible persons, to such books and papers in the principal's possession as may be necessary for the preparation of the accounts.—*Annoda Persad Roy v. Dwarkanath Gangopadhyay*, 1. L. R., 6 Cal. 754. [Feb. 1, 1881.]

THE Code of Civil Procedure does not authorize the dismissal of a suit on refusal or failure of a party to deposit the amount ordered by the Court as remuneration to a Commissioner appointed under s. 394 to examine accounts. The remuneration of a Commissioner appointed by the Court to examine accounts should, as a rule, be a definite amount, and not at a monthly allowance.—*Rāgava Chariār v. Védānta Chariār*, 1. L. R., 3 Mad. 259. [Aug. 22, 1881.]

WHERE a Commissioner was appointed by a Court under s. 180 of Act VIII. of 1859 to take accounts at the request of the plaintiffs, and his costs were not prepaid under s. 182, and the defendant was, by the decree, ordered to pay the costs of the suit, but the costs of the Commissioner were not entered in the decree, *held* in a suit by the Commissioner against the plaintiff for remuneration for his labour that the plaintiffs were liable.—*Gopalaratnamayyar v. Bupala Narasimma Nayudu*, 1. L. R., 4 Mad. 399. [Jan. 6, 1882.]

Extending to
Provincial S.
C. Courts.

395. The Court shall furnish the Commissioner with such part of the Court to give Commissioner proceedings and such necessary instructions. necessary instructions. appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

The proceedings of the Commissioner shall be received in evidence in the suit, unless the Court has reason to be dissatisfied with them, in which case the Court shall direct such further inquiry as is requisite.

Court to receive Commissioner's proceedings or direct further inquiry.

IN a suit for an account against an agent, the plaintiff stated that the defendant had not submitted proper accounts of his agency, and prayed that the defendant might be ordered to produce certain papers, and, that, on failure to submit the accounts, he might be decreed to pay the plaintiff Rs. 1,200 by way of damages. The plaintiff also alleged that, in consequence of the defendant's negligence and mismanagement, the plaintiff believed that he had sustained a loss of Rs. 5,000, and prayed for a decree for this sum. *Held* that no decree could be made for the sums mentioned, or any other sum, until an account had been taken, and the amount due from the defendant ascertained. *Per Field, J.*—It is the duty of an agent to render proper accounts to his employer irrespective of any contract to that effect. And he does not discharge that duty by merely delivering to his employer a set of written accounts without attending to explain them, and produce the vouchers by which the items of disbursements are supported. Method to be followed on taking accounts in the mufassal stated. If the taking of accounts by the Judge would occasion a waste of public time, he should resort to the provisions of ss. 394 and 395 of the Civil Procedure Code, and furnish the Commissioner with such part of the proceedings and such detailed instructions as may appear necessary. In order to enable an agent to prepare accounts to be furnished to his principal, he should be allowed to have reasonable access, at proper times and in the presence of responsible persons, to such books and papers in the principal's possession as may be necessary for the preparation of the accounts.—*Annoda Persad Roy v. Dwarkanath Gangopadhyay*, 1. L. R., 6 Cal. 754. [Feb. 1, 1881.]

IN a suit for an account by a principal against his agent, the plaintiff should ask in his plaint that a proper account may be taken. If the defendant is found liable to render such account for a certain period, the Court should make an interlocutory decree declaring that he is so liable, and direct him to file an account in Court within a fixed period. This decree may be enforced under s. 260 of the Civil Procedure Code. After an account

has been filed, the plaintiff should be allowed reasonable time to examine it. If the objections are numerous, the procedure prescribed by ss. 394 and 395 and form 157 of sch. 4 to the Code should be followed. When the accounts have been taken, the Court must determine the amount due, and the final decree should be for the payment of this amount, and also, if necessary, for the delivery of any papers, vouchers, or other documents which have come into the hands of the agent in the course of his employment. In a suit for an account against A and B as agents, the plaintiff asked for an account as against A from 1265 (1858) to 1283 (1876), and as against B from 1281 (1874) to 1283 (1876). *Held* that there had been no misjoinder. The seven days within which a notice of objections to a decree by a respondent under s. 561 of the Code must be given is not a period to which the provisions of para. 2 of s. 5 of the Limitation Act can be extended, and the Court has no discretion to extend the period. *Forms of keeping accounts of joint property in the mufassal considered.—*Degamber Mouzumdar v. Kadyath Roy*, I. L. R., 7 Cal. 654. [July 4, 1881.]

D.—Commission to make Partition.

396. In any suit in which the partition of immoveable property not paying revenue to Government appears to the Court to be necessary, the Court, after ascertaining the several parties interested in such property and their several rights therein, may issue a commission to such persons as it thinks fit to make a partition according to such rights. Extending to Provincial S. C. Courts.

The Commissioners shall ascertain and inspect the property, and shall divide the same into as many shares as may be directed by the order under which the commission issues, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

The Commissioners shall then prepare and sign a report, or (if they cannot agree) separate reports, appointing the share of each party, and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission, and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall either quash the same and issue a new commission, or (where the Commissioners agree in their report) pass a decree in accordance therewith.

In a suit for partition, the Subordinate Judge appointed an amin under s. 396 of the Civil Procedure Code to effect a partition. The amin made his report, which was objected to on the merits by the defendant, but ultimately the report was confirmed, the defendant having acquiesced in the proceedings. On appeal to the District Judge, the defendant took an objection, that the appointment of the amin was irregular. *Held* that, having acquiesced in the proceedings so far, it was too late for the defendant to take the objection. *Per Pontifex, J.* (Field, J., doubting).—In a suit for partition, it is competent to the Court, in its preliminary decree, to appoint any one person whom it thinks fit to be a Commissioner to make the partition under s. 396 of the Civil Procedure Code. The section uses the word 'Commissioners,' but it is not necessary for the purposes of partition that there should be more than one Commissioner, and by force of the General Clauses Act, the word 'Commissioners' may be read in the singular number. The intention of s. 396 is, that upon the first hearing of a suit, the Court shall determine whether the plaintiff is entitled to a partition, and shall ascertain who the several persons entitled to the property are, and shall direct by a preliminary decree or order that Commissioners be appointed to make the partition.—*Gayan Chunder Sen v. Durga Churn Sen*, I. L. R., 7 Cal. 318. [April 7, 1881.]

In a suit for an account by a principal against his agent, the plaintiff should ask in his plaint that a proper account may be taken. If the defendant is found liable to render such account for a certain period, the Court should make an interlocutory decree declaring that he is so liable, and direct him to file an account in Court within a fixed period. This decree may be enforced under s. 260 of the Civil Procedure Code. After an account

has been filed, the plaintiff should be allowed reasonable time to examine it. If the objections are numerous, the procedure prescribed by ss. 394 and 395 and form 157 of sch. 4 to the Code should be followed. When the accounts have been taken, the Court must determine the amount due, and the final decree should be for the payment of this amount, and also, if necessary, for the delivery of any papers, vouchers, or other documents which have come into the hands of the agent in the course of his employment. In a suit for an account against A and B as agents, the plaintiff asked for an account as against A from 1265 (1858) to 1283 (1876), and as against B from 1281 (1874) to 1283 (1876). *Held* that there had been no misjoinder. The seven days within which a notice of objections to a decree by a respondent under s. 561 of the Code must be given is not a period to which the provisions of para. 2 of s. 5 of the Limitation Act can be extended, and the Court has no discretion to extend the period. Forms of keeping accounts of joint property in the mufassal considered.—*Degamber Mozumdar v. Kallynath Roy*, 1. L. R., 7 Cal. 654. [July 4, 1881.]

WHERE in a suit for partition possession was sought of a definite share of a property consisting of a number of houses, *held* that the principle in such cases is that, if a property can be partitioned without destroying the intrinsic value of the whole property or of the shares, such partition ought to be made; but where partition cannot be made without destroying the intrinsic value of the property, then a money-compensation should be given.—*Ashanullah v. Kali Kinkur Kur*, 1. L. R., 10 Cal. 675. [April 17, 1884.]

AN order under s. 396 of the Code of Civil Procedure declaring the rights of the parties in a partition-suit, but leaving their shares to be determined in execution of the decree, is a "decree" within the meaning of s. 2 of the Code, and an appeal, therefore, lies from such order.—In the Matter of the Petition of Bhola Nath Dass; *Bhola Nath Dass v. Sonamoni Dasi*, 1. L. R., 12 Cal. 273. [July 30, 1885.]

THE proceedings contemplated by s. 396 of Act XIV. of 1882 are proceedings in a suit before decree, and in order to enable the Court in that suit to determine exactly the terms of that decree. Where those proceedings, however, were left to be taken in execution of the decree, the High Court, treating it as an error in point of form, and without deciding whether or not an objection, if it had been taken, would have been fatal to the proceedings, dealt with the case in the same way as was done in *Gyan Chunder Sen v. Doozga Churn Sen* (1. L. R., 7 Cal. 318) regarding the further proceedings taken after decree declaring the rights of the several parties as proceedings to obtain a decree on further consideration. Where in a partition-suit an order was made in the course of such proceedings by which the position of some of the parties to the suit was determined, but no declaration was made of the exact rights of each of the parties, *held*, it was a mere interlocutory order, and no appeal would lie from it. *Seemle*, such an order is not a decree within the terms of s. 2, Act XIV. of 1882. *Bholanath Dass v. Sonamoni Dasi* (1. L. R., 12 Cal. 272) distinguished.—*Bhoobun Moyi Dabee v. Shurut Sundery Dabee*, 1. L. R., 12 Cal. 275. [Aug. 12, 1885.]

WHERE an Appeal Court made a decree or order directing a commission to issue directed to an amir to make a partition of certain property into certain specified shares, and to allot the shares to the parties to the suit, *held* that such order amounted to a decree within the meaning of s. 2 of the Code of Civil Procedure, and that, though called a decree, it was in fact an order in the terms of s. 396 of the Code, and was a proper order to make.—*Bopin Behari Moduck v. Lal Mohun Chattopadhyaya*, 1. L. R., 12 Cal. 209. [Aug. 31, 1885.]

E.—General Provisions.

Extending to
Provincial S.
C. Courts.

397. Before issuing any commission under this chapter, the Court may order such sum (if any) at it thinks reasonable for the expenses of the commission to be, within a time to be fixed by the Court, paid into Court by the party at whose instance or for whose benefit the commission is issued.

Ditto.

Powers of Commissioners.

398. Any Commissioner appointed under this chapter may, unless otherwise directed by the order of appointment,

(a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him ;

(b) call for and examine documents and other things relevant to the subject of inquiry ;

(c) at any reasonable time enter upon or into any land or building mentioned in the order.

399. The provisions of this Code relating to the summoning, attendance, and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this chapter, whether the commission in execution of which they are so required has been issued by a Court situated within, or by a Court situate beyond, the limits of British India.

Extending to Provincial S. C. Courts.

For the purposes of this section, the Commissioner shall be deemed to be a Court of Civil Judicature.

400. Whenever a commission is issued under this chapter, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

Ditto.

Procedure *ex parte*.

If the parties do not so appear, the Commissioner may proceed *ex parte*.

PART III.

OF SUITS IN PARTICULAR CASES.

CHAPTER XXVI.

SUITS BY PAUPERS. . . .

Suits may be brought in *forma pauperis*.

401. Subject to the following rules, any suit may be brought by a pauper.

Ditto.

Explanation—A person is a “pauper” when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject-matter of the suit.

WHERE the representative of a pauper applies to bring a suit *in forma pauperis*, there is no necessity for the Court to inquire whether such representative is also a pauper, but the Court, if satisfied that he is the legal representative, should allow him to carry on the suit.—*Bhagbut Doss v. Bularan Doss*, 3 W. R. 20. [May 15, 1865.]

A NEXT friend, who is a pauper, can bring a suit on behalf of a pauper minor.—*Golapnunoee Dossee v. Prosonomoyee Dossee*, 11 B. L. R. 273. [July 14, 1873.]

WHERE a suit was brought on behalf of a pauper minor by a next friend who was also a pauper, it was held that the failure of such suit was no ground for saddling the costs on the next friend.—*Brijessurce Doss v. Kishore Doss*, 25 W. R. 316. [May 22, 1876.]

ALTHOUGH Chap. XXVI. of the Civil Procedure Code only provides for suits to be brought by a pauper, the Court has power to allow a defendant to defend *in forma pauperis*.—*Doorga Churn Doss v. Nottokally Dossee*, 1 L. R., 5 Cal. 819. [Mar. 15, 1880.]

THE rule of English practice which prevents a minor from instituting a suit *in forma pauperis* through his next friend, unless he gives proof not only that he is himself a pauper, but that the next friend is a pauper, and that he cannot get any substantial person to act as his next friend, is not to be found in, or deduced from the provisions of, the Civil Procedure Code.—*Venkatanarasayya v. Achemma*, 1 L. R., 3 Mad. 3. [Feb. 28, 1881.]

THE administrator of the estate of a deceased person may apply to sue *in formâ pauperis* under the provisions of Chap. XXVI. of the Code of Civil Procedure, 1882.—*In re Bill*, I. L. R., 7 Mad. 390. [Mar. 7, 1884.]

It is competent for the Court to allow a suit not originally instituted *in formâ pauperis* to be continued *in formâ pauperis*.—*Revji Pâtil v. Sahharâm*, I. L. R., 8 Bom. 615. [July 28, 1884.]

THE petitioners prayed to be allowed as paupers to sue the respondent for certain property specified in the schedule annexed to their petition. At the hearing of the petition under ss. 408 and 409 of the Civil Procedure Code (Act XIV. of 1882) the respondent appeared and deposited in Court some of the articles claimed by the petitioners to which he admitted they were entitled. The value of the articles deposited was Rs. 100. The petitioners acknowledged that the articles were their property, but declined to take possession of them. Held that the petitioners were not paupers as defined by s. 401 of the Civil Procedure Code (Act XIV. of 1882), being possessed of property worth Rs. 100 other than the subject-matter of the suit, and that they could not, therefore, be allowed to sue as paupers. The inquiry into pauperism under ss. 408 and 409 takes place before any suit is in existence, for, until an application to sue as a pauper is granted, there is no plaint and, consequently, no suit (see s. 410). Any property, therefore, found at such inquiry not to be really in dispute cannot be regarded as part of the "subject-matter of the suit," although it may be entered in the particulars of the application for leave to sue as a pauper. The ground for excluding the "subject-matter of the suit" under s. 401 is because such property is presumably out of the petitioner's reach, and cannot be made use of by him to carry on his litigation. In the present case the articles deposited in Court were freely at the disposal of the petitioners, and could not, therefore, be excluded from consideration.—*Dwârkânâth Nârâyan v. Mâdhavrâv Vishvanâth*, I. L. R., 10 Bom. 207. [Jan. 16, 1886.]

HELD that an order rejecting an application for permission to sue as a pauper, and striking the case off the Court's file, on the ground that the applicant had previously withdrawn the application and entered into a new contract with the defendants, was a "decree" within the meaning of s. 2 of the Civil Procedure Code, and appealable as such.—*Baldeo v. Gîla Kuâr*, I. L. R., 9 All. 129. [Dec. 6, 1884.]

Extending to
Provincial S.
C. Courts.

402. No suit shall be brought by a pauper to recover compensation for loss of caste, libel, slander, abusive language, or assault.

What suits excepted.

Ditto.

403. The application for permission to sue by a pauper shall be in writing, and shall contain the particulars required by section 50 in regard to plaints in suits: a schedule of any moveable or immoveable property belonging to the petitioner, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner hereinbefore prescribed for the signing and verification of plaints.

Application to be in writing.

Contents of application.

THE Code of Civil Procedure does not authorize the rejection of an application for leave to sue *in formâ pauperis* for want of merits when the applicant is found to be a pauper and his allegations disclose a right to sue. When an application for leave to sue *in formâ pauperis* is made, the Court should not go into evidence as to the merits of the claim.—*Koka Ranganâyaka Ammal v. Koka Venkatchellappanâyudu*, I. L. R., 4 Mad. 323. [Nov. 25, 1881.]

AN unsuccessful application of a wife to sue for dower *in formâ pauperis*, though opposed by her husband in a counter-petition denying his liability, is not such a demand and refusal of the dower as to constitute a cause of action. The application merely expresses an intention to claim it (if allowed to do so) in a particular way.—*Ranee Khajooroonissa v. Ranee Ryeesoonissa*, L. R., 2 Ind. Ap. 235.

Ditto.

404. Notwithstanding anything contained in section 36, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court under section 610 or section 611, in which case the application may be presented by a duly authorized agent, who can answer all material questions

Presentation of application.

relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

WHERE the pauper is not exempted from appearing in Court, it is imperative that he should present his application in person.—*Ex-parte Devgirgá Sumbhágir*, 4 Bom. H. C. R. 91. [Feb. 7, 1867.]

WHERE the pauper is exempted from appearing in Court under ss. 640 and 641, and the application is presented by a duly authorized agent, it is not necessary that such agent should also be a pauper. *Bhagbut Doss v. Buloram Doss* (3. W. R. 20). But such agent may be a pleader. *Kishore Mohun Bose v. Gour Monee Doss* (15 W. R. 194). And such pleader must have a special power-of-attorney, not an ordinary *akálatnáma*. *Mussa-mat Bhugobutty Koor v. Gunesli Dutt*, 21 W. R. 308. [Mar. 7, 1874.]

NO JUDGMENT or order passed in a suit to which a minor subject to the provisions of Act XL. of 1858 is a party will bind him on his attaining majority, unless he is represented in the suit by some person who has either taken out a certificate, or has obtained the permission of the Court to sue or defend on his behalf without a certificate. Permission granted to sue or defend on behalf of a minor under s. 3 of Act XL. of 1858 should be formally placed on the record. Chap. XXXI. of the Civil Procedure Code lays down the form in which a minor should appear as a party, and this form should be strictly followed. —*Mrinamoyi Dabia v. Jugodishhuri Dabia*, 1. L. R., 5 Cal. 450. [Dec. 5, 1879.]

405. If the application be not framed or presented in the manner prescribed by sections 403 and 404, the Court shall reject it. Extending to Provincial S. C. Courts.

Rejection of application.

406. If the application be in proper form and duly presented, the Judge may, if he thinks fit, examine the petitioner, or his agent, when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant. Ditto.

Examination of applicant.

When the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken under the provisions of this Code.

If presented by agent, Court may order applicant to be examined by commission.

UNDER the first clause the Judge himself must examine, and not delegate any other person to do so.—*Reg. v. Mir Sahib Kussamán*, 1. L. R., 1 Bom. 100. [Nov. 25, 1863.]

Rejection of application.

407. If it appear to the Court—

Ditto.

(a) that the applicant is not a pauper, or

(b) that he has, within the two months next before the presentation of the application, disposed of any property fraudulently or with a view to obtain the benefit of this chapter, or

(c) that his allegations do not show a right to sue in such Court, or

(d) that he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter,

the Court shall reject the application.

AN order rejecting an application under the above section is not appealable, nor can it be set aside under the Charter Act.—In the *Matter of Shaikh Babur Ali*, 24 W. R. 62. [May 12, 1875.]; *Khojedoonissa*, 7 W. R. 486 [May 22, 1867].

It is only the petitioner or his agent who is to be examined under this section, and not his witnesses.—In the *Matter of Purkash Ojha*, 25 W. R. 74. [Jan. 14, 1876.]

THE Code of Civil Procedure does not authorize the rejection of an application for leave to sue *in forma pauperis* for want of merits when the applicant is found to be a pauper and his allegations disclose a right to sue. When an application for leave to sue *in forma pauperis* is made, the Court should not go into evidence as to the merits of the claim.—*Koka Ranganáyaka Amudál v. Koka Venkateshappati Náyudu*, 1. L. R., 4 Mad. 323. [Nov. 25, 1881].

Two persons, being about to sue to redeem a certain *jaghir* village which they had mortgaged, applied for permission to sue as paupers. It appeared that they had entered into an agreement with a vakil to pay him, as remuneration for his services as vakil in the case, a lump sum of Rs. 1,500 as soon as the case was decided. In default of payment the vakil was authorized to recover the money out of the revenue of the said village. *Held* that such an agreement was within the scope of cl. d of s. 107 of the Civil Procedure Code (Act XIV. of 1882), and their applications to sue as paupers were rejected.—*Manohar Rámchandra v. Lakshman Mahádev*, I. L. R., 9 Bom. 371. [Feb. 26, 1885.]

WHERE an application for leave to sue as a pauper was rejected with reference to s. 407 (c) of the Civil Procedure Code on the ground that the claim was barred by limitation, and therefore the applicant had no right to sue, *held* by the Full Bench that the Court had acted within its powers, and that its jurisdiction not having been exercised illegally or with material irregularity, the High Court had no power of interference in revision under s. 622 of the Civil Procedure Code. *Amir Hassan Khan v. Sheo Baksh Singh* (I. L. R., 11 Cal. 6) referred to. The terms of s. 107 (c) of the Code must not be read as limiting the Court's discretion to merely ascertaining whether the "right to sue" arose within its jurisdiction, but have a more extended meaning, namely, that an applicant must make out that he has a good subsisting cause of action, capable of enforcement in Court, and calling for an answer, and not barred by the law of limitation or any other law. *Per* Mahmood, J.—The word "case" as used in s. 622 of the Civil Procedure Code should be understood in its broadest and most ordinary sense, including all adjudications which might constitute the subject of appeal subject to the rules governing the exercise of the appellate and revisional jurisdictions respectively; and it comprehends adjudications under s. 407, which fall under the same general category of adjudications as the rejection of an ordinary plaint under s. 53 or s. 54. *Phul Singh v. Jafar Nath* (Weekly Notes, 1882, p. 39), *Bhulneshri Dut v. Bidladhis* (Weekly Notes, 1882, p. 69), and *Sital Sahu v. Bachu Ram* (Weekly Notes, 1882, p. 92), referred to. Also *per* Mahmood, J.—The provisions of s. 107 must be interpreted strictly, inasmuch as they operate in derogation of the right possessed by every litigant to seek the aid of the Courts of Justice; and an exercise of jurisdiction under that section, when such exercise of jurisdiction is open to the objection of illegality or material irregularity, would form a proper subject of revision by the High Court. *Har Prasad v. Jafar Ali* (I. L. R., 7 All. 345) and *Ammal v. Nayudu* (I. L. R., 4 Mad. 323) referred to.—*Chattarpal Singh v. Raja Ram*, I. L. R., 7 All. 661. [April 8, 1885.]

Extending to
Provincial S.
C. Courts.

408. If the Court sees no reason to refuse the application on any of the grounds stated in section 407, it shall fix a day (of which at least ten days' previous notice shall be given to the opposite party and the Government Pleader) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

THE petitioners prayed to be allowed, as paupers, to sue the respondent for certain property specified in the schedule annexed to their petition. At the hearing of the petition under ss. 408 and 409 of the Civil Procedure Code (Act XIV. of 1882) the respondent appeared and deposited in Court some of the articles claimed by the petitioners to which he admitted they were entitled. The value of the articles deposited was Rs. 100. The petitioners acknowledged that the articles were their property, but declined to take possession of them. *Held* that the petitioners were not paupers as defined by s. 401 of the Civil Procedure Code (Act XIV. of 1882), being possessed of property worth Rs. 100 other than the subject-matter of the suit, and that they could not, therefore, be allowed to sue as paupers. The inquiry into pauperism under ss. 408 and 409 takes place before any suit is in existence, for, until an application to sue as a pauper is granted, there is no plaint and, consequently, no suit (see s. 410). Any property, therefore, found at such inquiry not to be really in dispute cannot be regarded as part of the "subject-matter of the suit," although it may be entered in the particulars of the application for leave to sue as a pauper. The ground for excluding the "subject-matter of the suit" under s. 401 is because such property is presumably out of the petitioner's reach, and cannot be made use of by him to carry on his litigation. In the present case the articles deposited in Court were freely at the disposal of the petitioners, and could not, therefore, be excluded from consideration.—*Dwárákánáth Náráyan v. Mádhavráv Vishvánáth*, I. L. R., 10 Bom. 207. [Jan. 16, 1886.]

409. On the day so fixed, or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may cross-examine the applicant or his agent, and shall make a memorandum of the substance of their evidence. Extending to Provincial S. Courts.

The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the application is or is not subject to any of the prohibitions specified in section 407.

The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

THE Judge must himself examine.—In the Matter of Eknáth bin Mádobá, 1 Bom. H. C. R. 102. [Dec. 2, 1863.]

How far a Court has power to review an order refusing a pauper's application to sue is a matter of doubt.—Mahomed Gasee Chowdry v. Doollub Beebee, 11 W. R. 22. [Jan. 8, 1869]; but see Khodejounissa, 7 W. R. 486. [May 22, 1867.]

WHERE an application was struck off for want of prosecution, it was held that it might be re-admitted.—In the Matter of Rani Umasundari Debi, 5 B. L. R. Ap. 29. [May 6, 1870.]

THE examination should extend to all matters referred to in s. 407, and not be limited to the question of pauperism alone.—In the Matter of Gunga Adhikaree, Petitioner, 14 W. R. 281. [Sep. 1, 1870.]; 11 B. L. R. Ap. 23 [May 8, 1873].

WHERE a party successfully opposed an application to sue as a pauper in a Subordinate Judge's Court on the ground of over-valuation, it was held that he could not afterwards object to the Munsif's jurisdiction.—Brahmo Moyee Dassia v. Anand Chunder Chatterjee, 22 W. R. 120. [May 22, 1874.]

AN order made under Act X. of 1877, s. 409, refusing leave to sue as a pauper, is subject to review under s. 538. The provisions of s. 413 do not affect the right of a person against whom such order has been made to obtain a review. A petitioner applying for such review must file a copy of the order of which he seeks a review, together with a memorandum of objections (ss. 541 and 625).—Adarji Edulji v. Manikji Edulji, 1. L. R., 4 Bom. 414. [July 12, 1880.]

THE petitioners prayed to be allowed as paupers to sue the respondent for certain property specified in the schedule annexed to their petition. At the hearing of the petition under ss. 408 and 409 of the Civil Procedure Code (Act XIV. of 1882) the respondent appeared and deposited in Court some of the articles claimed by the petitioners, to which, he admitted, they were entitled. The value of the articles deposited was Rs. 100. The petitioners acknowledged that the articles were their property, but declined to take possession of them. *Held* that the petitioners were not paupers as defined by s. 401 of the Civil Procedure Code (Act XIV. of 1882), being possessed of property worth Rs. 100 other than the subject-matter of the suit, and that they could not, therefore, be allowed to sue as paupers. The inquiry into pauperism under ss. 408 and 409 takes place before any suit is in existence, for, until an application to sue as a pauper is granted, there is no plaint and, consequently, no suit (see s. 410). Any property, therefore, found as such inquiry not to be really in dispute cannot be regarded as part of the "subject-matter of the suit," although it may be entered in the particulars of the application for leave to sue as a pauper. The ground for excluding the "subject-matter of the suit" under s. 401 is because such property is presumably out of the petitioner's reach, and cannot be made use of by him to carry on his litigation. In the present case the articles deposited in Court were freely at the disposal of the petitioners, and could not, therefore, be excluded from consideration.—Dwárákáth Náráyan v. Mádhavráv Vishvánáth, 1. L. R., 10 Bom. 207. [Jan. 16, 1886.]

WHERE no day was fixed, and the Judge, on default by non-appearance, struck off the application "for the present," it was held that, as there had been no refusal to allow the applicant to sue as a pauper, he might renew his application.—Rájah Bhoj Singh v. Ram Maha Koonwer, 3 Agra, Mis. 1.

Extending to
Provincial S.
C. Courts.

410. If the application be granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted under Chapter V., except that the plaintiff shall not be liable to any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader, or other proceeding connected with the suit.

THE propriety of an order granting leave to sue as a pauper can be contested if the case is appealed. Where a Court gave leave to sue as a pauper (a previous application having been rejected), the suit was dismissed on appeal.—*Baboo Boshessur Singh v. Maharaja Muhessur Baksh Singh*, S. D., N. W., 1864, p. 189.

A SUPERIOR Court has no power, on appeal or motion, to set aside an application granted under the above section. But if it appears, after the granting of the application, that the order has been improperly obtained, the proper course is to apply to the Court which granted the application.—In the Matter of Khodejoonissa, 7 W. R. 486. [May 22, 1867.]

THE petitioners prayed to be allowed as paupers to sue the respondent for certain property specified in the schedule annexed to their petition. At the hearing of the petition under ss. 408 and 409 of the Civil Procedure Code (Act XIV. of 1882) the respondent appeared and deposited in Court some of the articles claimed by the petitioners, to which, he admitted, they were entitled. The value of the articles deposited was Rs. 100. The petitioners acknowledged that the articles were their property, but declined to take possession of them. *Held* that the petitioners were not paupers as defined by s. 401 of the Civil Procedure Code (Act XIV. of 1882), being possessed of property worth Rs. 100 other than the subject-matter of the suit, and that they could not, therefore, be allowed to sue as paupers. The inquiry into pauperism under ss. 408 and 409 takes place before any suit is in existence, for, until an application to sue as a pauper is granted, there is no plaint and, consequently, no suit (see s. 410). Any property, therefore, found at such inquiry not to be really in dispute cannot be regarded as part of the "subject-matter of the suit," although it may be entered in the particulars of the application for leave to sue as a pauper. The ground for excluding the "subject-matter of the suit" under s. 401 is because such property is presumably out of the petitioner's reach, and cannot be made use of by him to carry on his litigation. In the present case the articles deposited in Court were freely at the disposal of the petitioners, and could not, therefore, be excluded from consideration.—*Dwarkanath Narayan v. Madhavráv Vishvanáth*, I. L. R., 10 Bom. 207. [Jan. 16, 1886.]

Ditto.

411. If the plaintiff succeed in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; and such amount shall be a first charge on the subject-matter of the suit, and shall also be recoverable by the Government from any party ordered by the decree to pay the same, in the same manner as costs of suits are recoverable under this Code.

A PAUPER-SUIT for possession was decreed with mesne-profits to be ascertained in execution, costs being also awarded, including the value of stamps due to Government, which was to be paid by plaintiff and defendant in shares proportionate to their ultimate success when the amount of *wasilat* should be ascertained. As the parties did not choose to go into the inquiry as to the mesne-profits, the Court, on a motion by Government, called upon the parties to appear, and, on their refusing to do so, alleged its original order with respect to the payment of the stamp-duty, and declared that it should be realized from both the parties jointly. *Held* that the Court had no authority to make the second order in favour of Government, and that the proceedings taken in execution thereof were without legal foundation.—*Shostee Churn Roy v. Collector of Chittagong*, 13 W. R. 156. [Feb. 9, 1870.]

WHERE Government, after attaching a pauper plaintiff's decree in order to recover the value of stamps, consents to the sale of the decree in execution of another decree against the pauper, and obtains an order by which, it secures the chance of any surplus arising from such sale, it cannot afterwards, when the sale is found to yield no surplus, be heard

to say, as against the purchaser, that the decree was sold subject to its claim for stamps. The amount of stamps in a pauper case cannot be claimed as a lien or charge upon the decree in favour of Government, but is recoverable in the same manner as costs of suit; Government being, as regards its claim in such a case, in no higher position than an ordinary judgment-creditor.—*Prankristo Roy v. Collector of Moorshedabad*, 15 W. R. 205. [Feb. 28, 1871.]

A CLAIM for fees would be looked upon as a public claim, and is not subject to the ordinary rules for limitation in execution of decrees under Act XIV. of 1859.—*Shami Mohammed v. Munshi Mohammed Ali Khan* (2 B. L. R. Ap. 22); *Collector of South Arcot v. Thatha Charry* (8 Mad H. C. R. 40). In Bengal, however, it has been ruled that, under the new Limitation Act, the ordinary period for execution applies.—*Collector of Beerbhoom v. Sreehurry Chuckerbutty*, 22 W. R. 512. [Sep. 7, 1874.]

N was allowed to bring a suit as a pauper. His suit was dismissed, the decree directing that he should pay the costs of the defendants. On the defendants' application, certain immovable property belonging to N was attached in execution of this decree, and was sold. Held that the Crown was entitled to be paid first out of the proceeds of such sale the amount of the court-fees N would have had to pay if he had not been allowed to sue as a pauper. The principle of the ruling in *Ganpat Putaya v. Collector of Canara* (I. L. R., 1 Bom. 7) followed.—*Gulzari Lal v. Collector of Bareilly* I. L. R., 1 All. 596. [Feb. 15, 1878.]

WITH a view to recover the amount of court-fees which J would have had to pay had he not been permitted to bring a suit as a pauper, the Government caused certain property belonging to B, the defendant in such suit, who had been ordered by the decree in such suit to pay such amount, to be attached. This property was subsequently attached by the holder of a decree against B, which declared a lien on the property created by a bond. The property was sold in the execution of this decree. Held that the Government was entitled to be paid first out of the proceeds of such sale the amount of the court-fees J would have had to pay had he not been allowed to sue as a pauper, the principle that the Government takes precedence of all other creditors not being liable to an exception in the case of lien-holders. The decision in *Ganpat Putaya v. Collector of Canara* (I. L. R., 1 Bom. 7) applied in this case.—*Collector of Moradabad v. Muhammad Daim Khan*, I. L. R., 2 All. 196. [Mar. 20, 1879.]

GOVERNMENT is not entitled to any exemption from the provisions of the Indian Limitation Act, 1877, relating to applications. Held, therefore, that an application by Government under s. 411 of the Code of Civil Procedure to recover the amount of court-fees from a party ordered by the decree to pay the same was subject to the provisions of art. 178 of the Indian Limitation Act, 1877.—*Appaya v. Collector of Vizagapatam*, I. L. R., 4 Mad. 155. [Sep. 13, 1881.]

HELD that a Collector applying on behalf of Government, under s. 411 of the Civil Procedure Code, for recovery of court-fees by attachment of a sum of money payable under a decree to a plaintiff suing *in forma pauperis*, might be deemed to have been a party to the suit in which the decree was passed, within the meaning of s. 244 (c) of the Code, and that an appeal would, therefore, lie from an order granting such application. A plaintiff suing *in forma pauperis* to recover property valued at Rs. 60,000 obtained a decree for Rs. 1,439. The Court, with reference to the provisions of s. 411 of the Civil Procedure Code, directed that the plaintiff should pay Rs. 1,196 as the amount of court-fees which would have been paid by him if he had not been permitted to sue as a pauper. The Collector having applied under s. 411 to recover this amount by attachment of the Rs. 1,439 payable to the plaintiff, the defendant objected that (i) certain costs payable to her by the plaintiff under the same decree, and (ii) a sum of money payable to her by the plaintiff under a decree which she had obtained in a cross-suit in the same Court, should be set-off against the Rs. 1,439 payable by her to him with reference to ss. 246 and 247 of the Code, and that thus nothing would remain due by her which the Government could recover. No application for execution was made by the plaintiff for his Rs. 1,439, or by the defendant for her costs. In appeal from an order allowing the Collector's application, it was contended that the "subject-matter of the suit" in s. 411 of the Code meant the sum which the successful pauper-plaintiff is entitled to get as a result of his success in the suit; but that in the suit and the cross-suit taken together, the plaintiff ultimately stood to lose a small sum, the defendant being the holder of the larger sum awarded altogether. Held that the contention had no force, as execution had not been taken out by the plaintiff or the defendant or both, and it could not be said that the Government had been trying to execute the plaintiff's decree, or was a representative of the plaintiff as holder of the decretal order in his favour for Rs. 1,439, so as to bring into operation the special rules of ss. 246 and 247 of the Code between him and the defendant. Held also that the plaintiff

was one who, in the sense of s. 411, had succeeded in respect of part of the "subject-matter" of his suit, and on that part therefore a first charge was by law reserved and secured to the Government, which was justified in recovering it in these proceedings from the defendant, who was ordered by the decree to pay it in the same way as costs are ordinarily recoverable under the Code. *Held* that the decree in the suit and the cross-suit not having reached a stage in which the provisions of ss. 246* and 247 of the Code would come into play, no questions of set-off and consequent reduction or other modification of the "subject-matter" of the suit decreed against the defendant as payable by her to the plaintiff had arisen or could be entertained.—*Janki v. Collector of Allahabad*, I. L. R., 9 All. 64. [Nov. 15, 1886.]

Extending to
Provincial S.
C. Courts.

412. If the plaintiff fails in the suit, or if he is dispaupered, or if the Procedure when pauper suit is dismissed under section 97 or 98, the Court fails, shall order the plaintiff, or any person made, under section 32, co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; and if it find that the suit was frivolous or vexatious, it may also punish the plaintiff with fine not exceeding one hundred rupees, or with imprisonment for a term which may extend to a month, or with both.

Ditto.

413. An order of refusal made under section 409 to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by Government in opposing his application for leave to sue as a pauper.

WHERE a Court has not refused an application, but has simply returned it in order that the questions of pauperism may be tried by a Court of concurrent jurisdiction (*Skinner v. Orde* (I. L. R., 1 All. 230); or where a Court strikes off, "for the present," the application for non-appearance (*Rajah Bhoj Singh v. Ram Maha Koonwer* (3 Agra, Mis. 1); or where a Court dismisses the application for want of prosecution (In the Matter of *Rani Umasundari* (5 B. L. R. Ap. 29), the above section does not apply, but the application may be renewed. [May 6, 1870.]

AN order made under Act X. of 1877, s. 409, refusing leave to sue as a pauper, is subject to review under s. 623. The provisions of s. 413 do not affect the right of a person against whom such order has been made to obtain a review. A petitioner applying for such review must file a copy of the order of which he seeks a review, together with a memorandum of objections (ss. 541 and 625).—*Adarji Edulji v. Manikji Edulji*, I. L. R., 4 Bom. 414. [July 12, 1880.]

Ditto.

414. The Court may, on motion by the defendant, or by the Government Pleader, of which one week's notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered—

- (a) if he is guilty of vexatious or improper conduct, in the course of the suit;
- (b) if it appears that his means are such that he ought not to continue to sue as a pauper, or
- (c) if he has entered into any agreement with reference to the subject-matter of the suit, under which any other person has obtained an interest in such subject-matter.

THIS is a new section. In the matter of *Khodejoonissa* (7 W. R. 486) it was held that where it was discovered, after leave was granted to sue *in forma pauperis*, that the applicant should not be permitted to continue to carry on his suit as a pauper, the proper course was to proceed under this section, and not by motion or appeal in the superior Courts.

Ditto.

415. The costs of an application for permission to sue as a pauper and of an inquiry into pauperism are costs in the suit.

Costs.

CHAPTER XXVII.

SUIT BY OR AGAINST GOVERNMENT OR PUBLIC OFFICERS.

416. Suits by or against the Government shall be instituted by or Extending to
 Suits by or against Secre- against (as the case may be) the Secretary of State Provincial S.
 tary of State in Council. for India in Council. C. Courts.

THE acts of a Government officer bind the Government only when he is acting in the discharge of a certain duty within the limits of his authority, or, if he exceed that authority, when the Government in fact or in law, directly or by implication, ratifies the excess.—Collector of Masulipatam v. Cavalry Vencata Narainapah, 2 W. R., P. C., 61. [Dec. 2, 1861.]

A SUIT will not lie in the High Court against the Collector of Madras, residing and carrying on business at Sydapet, in respect of matters arising in Chingleput, though his Deputy Collector carried on business within the local limits, and the orders and proceedings in reference to the matters in question were in his name of office as Collector of Madras.—Subbaraya Mudali v. Government and Cunliffe, 1 Mad. H. C. R. 286; Rundle v. Secretary of State in Council, 1 Hyde, 37; Hearsay v. Secretary of State, 1. L. R., 6 All. 46. [Mar. 27, 1863.]

No suit will lie against Government for damages sustained by reason of a public ferry being taken up by a Magistrate.—Collector of Patna v. Romanath Tagore, 7 W. R. 191. [Feb. 25, 1867.]

A SUIT against an agent to the Governor-General, on the part of Government, is substantially a suit against Government, and ought, under s. 9, Act XI. of 1865, to be brought in a Court having jurisdiction at the seat of Government.—Roopun Tewares v. Buckle (W. B.), 10 W. R. 142. [July 11, 1868.]

A SUIT will lie against Government for damages for wrongful dismissal of a servant.—Hughes v. Secretary of State for India in Council, 7 B. L. R. 688. [June 26, 1871.]

WHERE damages were sustained by reason of negligence in the carriage of goods by the Government Bullock Train, the Secretary of State was held liable.—Deputy Postmaster of Bareilly v. Earle, 3 N. W. P. 195. [Aug. 1, 1871.]

THE Government is not bound by a contract entered into by an officer in the Public Works Department in excess of his authority.—Beer Kishore Sahoy v. Government of Bengal, 17 W. R. 497. [April 6, 1872.]

UNDER s. 521 of the Criminal Procedure Code (Act X. of 1872), a First-class Magistrate in charge of a taluka made an order, declaring certain land to be part of a public thoroughfare, and directing the plaintiff to remove the obstruction caused by him to it. The plaintiff sued the Magistrate to establish his right to the land, alleging that it was his property, and that the Magistrate's order was wrong. The Assistant Judge, who tried the suit, dismissed it, holding that it did not lie against the Magistrate. On appeal to the High Court, it was held that the Assistant Judge might have properly permitted the plaintiff to amend the suit by striking out the name of the First-class Magistrate as defendant, and substituting in that capacity the Secretary of State for India in Council. The High Court, accordingly, reversed the decree of the Assistant Judge, and remanded the suit for re-trial on the merits, after making the amendment directed.—Nilkanthapa v. Magistrate of Sholapur, 1. L. R., 3 Bom. 670. [April 13, 1880.]

ON the 11th August 1879, the defendant, as a Magistrate in charge of a taluka, made an order under ss. 523 and 526 of the Criminal Procedure Code (Act X. of 1872), directing the plaintiff to remove a certain *ota*, on the ground that it had been built upon a public thoroughfare. The plaintiff thereupon sued the Magistrate for a declaration that the *ota* and site belonged to him, and prayed for a reversal of the Magistrate's order. The Assistant Judge who tried the suit dismissed it, holding that it did not lie against the defendant. On appeal, the High Court, following the decision in Nilkanthapa Malkapa v. Magistrate (First Class) in charge of Sholapur Taluka (1. L. R., 3 Bom. 670), reversed the decree of the Assistant Judge, and remanded the case, in order that the plaintiff might amend his suit by striking out the name of the First-class Magistrate as defendant, and substituting in that capacity the Secretary of State for India in Council, and directing the lower Court to determine the suit upon its merits after the above amendment and due service of process.—Balaram Chatrukalal v. Magistrate of Igatpuri, 1. L. R., 6 Bom. 672. [June 20, 1882.]

A SUIT will lie against Government for any breach of contract.—Ross Johnson v. Secretary of State, 2 Hyde, 153.

UNDER s. 9, Act I., 1877, no suit will lie against Government for possession of immoveable property without proof of title.

WHERE certain Government coolies let fall an iron funnel while carrying it from the Kidderpur Dockyard to a steamer in the river, and the noise startled a horse, which rushed over it, and injured itself, it was held that the Secretary of State was liable.—P. and O. Co. v. Secretary of State for India, Bourke, 162.

Extending to
Provincial S.
C. Courts.

417. Persons being, *ex officio* or otherwise, authorized to act for Government in respect of any judicial proceeding, shall be deemed to be the recognized agents by whom appearances, acts, and applications under this Code, may be made or done on behalf of Government.

Ditto. **418.** In suits by the Secretary of State for India in Council, instead of inserting in the plaint the name and description of the plaintiff, it shall be sufficient to insert the words, "The Secretary of State for India in Council."

Ditto. **419.** The Government Pleader in any Court shall be the agent of the Government for the purpose of receiving processes against the said Secretary of State in Council issuing out of such Court.

Ditto. **420.** The Court, in fixing the day for the said Secretary of State in Council to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channels, and for the issue of instructions to the Government Pleader to appear and answer on behalf of the said Secretary of State in Council or the Government, and may extend the time at its discretion.

Ditto. **421.** The Court may also, in any case in which the Government Pleader is not accompanied by any person on the part of the said Secretary of State in Council, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

Ditto. **422.** Where the defendant is a public officer, the Court may send a copy of the summons to the head of the office in which the defendant is employed, for the purpose of being served on him, if it appear to the Court that the summons may be most conveniently so served.

Ditto. **423.** If the public officer, on receiving the summons, considers proper to make a reference to the Government before answering to the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel ;

and the Court, upon such application, may extend the time for so long as appears to be requisite.

Ditto. **424.** No suit shall be instituted against the said Secretary of State in Council, or against a public officer in respect of an act purporting to be done by him in his official capacity, until the expiration of two months next after notice in writing has been, in the case of the Secretary of State in Council, delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the District, and, in the case of a public officer,

delivered to him or left at his office, stating the cause of action, and the name and place of abode of the intending plaintiff; and the plaint must contain a statement that such notice has been so delivered or left.

A COLLECTOR, when acting under s. 204 of Act XIX. of 1873 as the agent of the Court of Wards in respect of the estate of a disqualified person, is a public officer within the meaning of ss. 2 and 424 of Act X. of 1877, and consequently, when sued for acts done in that capacity, is entitled to the notice of suit required by the latter section.—Collector of Bijoor v. Munwar, I. L. R., 3 All. 20. [June 11, 1880.]

THE Official Trustee is a public officer within the definition given in s. 2 of the Civil Procedure Code. The cases in which a public officer is entitled to notice of suit under s. 424 of the Code are those in which he is sued for damages for some wrong inadvertently committed by him in the discharge of his official duties, and the object of giving notice is, that if a public body or officer entrusted with powers happens to commit an inadvertence, irregularity, or wrong before any one has a right to require payment in respect of that wrong, he shall have an opportunity of setting himself right, making amends, restoring what he has taken, or paying for the damages he has done. The Official Trustee, therefore, is not entitled to notice of suit, when the question to be decided relates to the rights of the cestui que trust in respect of the trust-fund, and not to a wrong committed by him.—Shahabzadee Shahunshah Begum v. Fergusson, I. L. R., 7 Cal. 499. [Aug. 4, 1881.]

THE Secretary of State is not a necessary party to a suit to set aside a sale for arrears of revenue, but the Government have such interest as would, on their application, entitle them to be made a party. S. 424 of the Civil Procedure Code does not preclude a Court from adding the Secretary of State as a necessary party under s. 32 of the Code.—Bal Mokoond Lall v. Jirjudhum Roy, I. L. R., 9 Cal. 271. [June 23, 1882.]

425. No warrant of arrest shall be issued in such suit without the consent in writing of the District Judge. Extending to Provincial S. C. Courts.

426. If the Government undertakes the defence of a suit against a public officer, the Government Pleader, upon being furnished with authority to appear and answer to the plaint, shall apply to the Court; and upon such application the Court shall cause a note of his authority to be entered in the register. Ditto.

Application where Government undertakes defence.

427. If such application is not made by the Government Pleader on or before the day fixed in the notice or the defendant to appear and answer to the plaint, the case shall proceed as in a suit between private parties, except that the defendant shall not be liable to arrest before judgment, nor his property to attachment, otherwise than in execution of a decree. Ditto.

Procedure where no such application made.

428. In a suit against a public officer in respect of such act as aforesaid, the Court shall exempt the defendant from appearing in person when he satisfies the Court that he cannot absent himself from his duty without detriment to the public service. Ditto.

Exemption of public officers from personal appearance.

429. When the decree is against the said Secretary of State in Council or against a public officer in respect of such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the Local Government. Ditto.

Procedure where decree against Government or public officer.

Execution shall not issue on any such decree unless it remains unsatisfied for the period of three months computed from the date of the report.

CHAPTER XXVIII.

SUITS BY ALIENS, AND BY OR AGAINST FOREIGN AND NATIVE RULERS.

Extending to
Provincial S.
C. Courts.

430. Alien enemies residing in British India with the permission of the Governor-General in Council, and alien friends, may sue in the Courts of British India as if they were subjects of Her Majesty.

No alien enemy residing in British India without such permission, or residing in a foreign country, shall sue in any of such Courts.

Explanation.—Every person residing in a foreign country, the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a license in that behalf under the hand of one of Her Majesty's Secretaries of State or of a Secretary to the Government of India, shall, for the purpose of the second paragraph of this section, be deemed to be an alien enemy residing in a foreign country.

Ditto.

When foreign state may sue.

431. A foreign State may sue in the Courts of British India; provided that—

(a) it has been recognized by Her Majesty or the Governor-General in Council, and

(b) the object of the suit is to enforce the private rights of the head or of the subjects of the foreign State.

The Court shall take judicial notice of the fact that a foreign State has not been recognized by Her Majesty or by the Governor-General in Council.

Ditto.

432. Persons specially appointed by order of Government at the request of any Sovereign Prince or ruling Chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without British India, to prosecute or defend any suit on his behalf, shall be deemed to be the recognized agents by whom appearances, acts, and applications under this Code, may be made or done on behalf of such Prince or Chief.

S. 432 of the Civil Procedure Code does not prevent the institution by an independent prince of a suit in a Court in British India in his own name, and through a recognized agent other than one appointed under that section.—*Beer Chunder Manikya v. Ishan Chunder Burdhan*, I. L. R., 10 Cal. 136. [Sep. 10, 1883.]

THE *desai* of Pátadi, a talukdar of the fifth class in the province of Káthiáwár, in virtue of his being the proprietor of seven villages within the British Political Agency of Káthiáwár, is a ruling chief within the meaning of ss. 432 and 433 of the Code of Civil Procedure (Act XIV. of 1882), and can only be sued with the consent of the Government in a competent Court not subordinate to the District Court.—*Kambhai Ajubhai v. Himatsangji Joravarangji*, I. L. R., 3 Bom. 415. [May 9, 1884.]

THE "private rights" spoken of in s. 431 (cl. b.) of the Code of Civil Procedure do not mean individual rights as opposed to those of the body politic or State, but those private rights of the State which must be enforced in a Court of justice, as distinguished from its political or territorial rights, which must, from their very nature, be made the subject of arrangement between one State and another. They are rights which may be enforced by a foreign State against private individuals as distinguished from rights which one State in its political capacity may have as against another State in its political capacity. The *Emperor of Austria v. Day* (30 L. J. Ch. 690; 2 Giff. 628), *United States of America v. Wagner* L. R., 2 Ch. Ap. 582, approved of. There is nothing to prevent a foreign or feudatory State from holding immoveable property in British India, and to such property the rule of intestate succession laid down in s. 5 of the Succession Act (Act X. of 1865) does not apply. The State must be regarded as a quasi-corporation

which continues to exist as a State so long as it is recognized as such by Her Majesty, whatever the rule of succession to it may be, and whatever may be its form of Government. Case in which it was found on the facts that certain immoveable property situated in British India, which had formerly belonged to the State of Cherrapoonjee, having been granted by a former Raja of that State to the defendant, was still the property of the State, on the ground that the Raja was not competent to alienate it, and that the defendant's plea of adverse possession and limitation was not supported by the evidence.—*Hajon Manick v. Bur Singh*, I. L. R., 11 Cal. 17. [July 30, 1884.]

433. Any such Prince or Chief, and any ambassador or envoy of a Sovereign State, may, with the consent of Government, certified by the signature of one of its Secretaries (but not without such consent), be sued in any competent Court not subordinate to a District Court. Extending to Provincial S. C. Courts. (except first para.)

Such consent shall not be given unless—

(a) the Prince, Chief, ambassador, or envoy, has instituted a suit in such Court against the person desiring to sue him; or

(b) the Prince, Chief, ambassador, or envoy, by himself or another, trades within the local limits of the jurisdiction of such Court; or

(c) the subject-matter of the suit is immoveable property situate within the said local limits and in the possession of the Prince, Chief, ambassador, or envoy.

No such Prince, Chief, ambassador, or envoy, shall be arrested under this

Sovereign Princes, &c., exempt from arrest.

When their property may be attached.

Code; and no decree shall be executed against the property of any such Prince, Chief, ambassador, or envoy, unless with consent of Government certified as aforesaid.

THE Rajah of Hill Tipperah is a Sovereign Prince within the meaning of Chapter XXVIII. of Act X. of 1877, and cannot be sued personally in the Courts of British India except under the conditions specified in s. 433 of that Act. The fact of a defendant not subject to the jurisdiction of a Court having waived his privilege in previous suits brought against him does not give the Court jurisdiction to entertain a suit against him in which he pleads that he is not subject to such jurisdiction. A suit for maintenance which seeks to have maintenance made a charge on immoveable property is not a suit for immoveable property within the meaning of cl. c, s. 433, Act X. of 1877, nor is it a suit for "benefits to arise out of land" within the meaning of the definition of the words "immoveable property" contained in Act I. of 1868, s. 2, cl. 5. A claim for maintenance is not a charge upon immoveable property. A member of the royal family of Hill Tipperah brought a suit against the Rajah to have it declared that with respect to certain land situate within British India, and forming portion of the possessions of the Rajah, he was entitled to the post of jabra, and to succeed to such land on the death of the Rajah, and also claimed maintenance, and sought to have it declared that such maintenance should be a charge on the revenue of the land situate in British India. *Held* that the British Courts had no jurisdiction to entertain the suit, it not being one for immoveable property.—*Beer Chunder Manikya v. Raj Coommar Nobodeep Chunder Deb Burmono*, I. L. R., 9 Cal. 535. [Feb. 23, 1883.]

Execution in British India of decrees of Courts of Native States.

434. The Governor-General in Council may, from time to time, by notification in the *Gazette of India*, Extending to Provincial S. C. Courts.

(a) declare that the decrees of any Civil or Revenue Courts situate in the territories of any Native Prince or State in alliance with Her Majesty, and not established by the authority of the Governor-General in Council, may be executed in British India, as if they had been made by the Courts of British India, and

(b) cancel any such declaration.

So long as such declaration remains in force, the said decrees may be executed accordingly.

No suit is maintainable in any Court in British India founded upon the judgment of a Court situate in a Native State. The Courts of British India cannot enforce the decrees of any Native Courts, except as provided by s. 434 of the Civil Procedure Code (Act X. of 1877). Under that section the decrees of certain Native Courts may be executed in British India, as if they had been made by the Courts of British India. A suit will not lie in the Courts of India upon the judgment of any Court in British India. The only exception to this rule is in the case of judgments of a Court of Small Causes on which suits are permitted to be brought in the High Court in order to obtain execution against immoveable property. A foreign judgment creates an obligation belonging to the class of implied contracts. A Court which entertains a suit on a foreign judgment cannot institute an inquiry into the merits of the original action or the propriety of the decision. *Quere.*—Whether suits on foreign judgments are maintainable in the Civil Courts of India?—*Bhavanishankar Shevakram v. Pursadri Kalidas*, 1. L. R., 6 Bom. 292. [Feb. 14, 1882.]

A suit cannot generally be maintained in any British Court upon the judgment of a Native Court. *Quere.*—Whether it could where there had been a notification by the Governor-General of India under s. 434 of the Civil Procedure Code (Act XIV. of 1882)?—*Himmatlal v. Shivajirav*, 1. L. R., 8 Bom. 593. [July 16, 1884.]

CHAPTER XXIX.

SUITS BY AND AGAINST CORPORATIONS AND COMPANIES.

Extending to
Provincial S.
C. Courts.

435. In suits by a Corporation, or by a Company authorized to sue and be sued in the name of an officer or of a trustee, the plaint may be subscribed and verified on behalf of the Corporation or Company, by any director, secretary, or other principal officer of the Corporation or Company, who is able to depose to the facts of the case.

Ditto.

436. When the suit is against a Corporation or against a Company authorized to sue and be sued in the name of an officer or of a trustee, the summons may be served—

(a) by leaving it at the registered office (if any) of the Corporation or Company, or

(b) by sending it by post in a letter addressed to such officer or trustee at the office (or, if there be more offices than one, at the principal office in British India) of the Corporation or Company, or

(c) by giving it to any director, secretary, or other principal officer of the Corporation or Company :

And the Court may require the personal appearance of any director, secretary, or other principal officer of the Corporation or Company who may be able to answer material questions relating to the suit.

For the purposes of summons, a Railway Company must be deemed to dwell at its principal office. An executive engineer of such a Company is not an officer on whom service may be made under s. 436 of the above section.—*Hanlon v. India Branch Railway Company*, 1 Hyde, 197.

CHAPTER XXX.

SUITS BY AND AGAINST TRUSTEES, EXECUTORS, AND ADMINISTRATORS.

Ditto.

437. In all suits concerning property vested in a trustee, executor, or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor, or administrator shall represent the persons so interested, and it shall not ordinarily be

necessary to make them parties to the suits. But the Court may, if it thinks fit, order them or any of them to be made such parties.

THE will of a Pársi testator in Bombay affecting lands in the mofussil, made before the 1st January 1866, when the Indian Succession Act* (X. of 1865) came into force, and proved subsequently, viz., on the 25th day of January 1866, but before Act XXIV. of 1867 came into operation, is governed by Act XXVII. of 1860.* Held that such probate has the same effect as probate in respect of the property of British subjects, but for the purpose only of collecting debts. It did not confer a title on the executrix to represent the testator's estate, except for the above-mentioned limited purpose, or to exercise the usual powers of an executrix where the testator's intention, to be gathered from the will of the will, was to vest his property, with the entire management of, and control over it, in a series of persons in succession as trustees, the first of whom was the executrix. He also that, having regard to s. 437 of the Code of Civil Procedure, the persons acting as such trustees in succession under the said will adequately represented all persons beneficially interested in the estate in all suits relating to it.—*Ardesir Jehángir v. Hirábái*, I. L. R., 8 Bom. 474. [May 8, 1884.]

438. When there are several executors or administrators, they shall all be made parties to a suit against one or more of them : Extending to Provincial S. C. Courts.

Joinder of executors and administrators.
Provided that executors who have not proved their testator's will, and executors and administrators beyond the local limits of the jurisdiction of the Court, need not be made parties.

439. Unless the Court directs otherwise, the husband of a married administratrix or executrix shall not be a party to a suit by or against her. Ditto.

Husband of married executrix not to join.

CHAPTER XXXI.

SUITS BY AND AGAINST MINORS, AND PERSONS OF UNSOUND MIND.

440. Every suit by a minor shall be instituted in his name by an adult person, who, in such suit, shall be called the next friend of the minor, and may be ordered to pay any costs in the suit as if he were the plaintiff. Ditto.

Minor must sue by next friend.
Costs.

ACT XX. of 1864 is not superseded by Act X. of 1877. Where, therefore, a widow claimed to have charge of property in trust for her minor sons, it was held necessary, under s. 2 of Act XX. of 1864, that she should obtain a certificate of administration, if the whole estate was of greater value than Rs. 250, and that it was competent to the Court, if there was any pressing necessity (owing to the operation of the law of limitation) that a suit should be brought at once, to accept the plaint and stay proceedings until the mother had obtained a certificate under Act XX. of 1864. *Vijker v. Jijibhai* (9 Bom. H. C. R. 310) followed.—*Murlidhar v. Supdu*, I. L. R., 3 Bom. 149. [Jan. 21, 1879.]

A VOLUNTARY guardian has no right to sue on behalf of a minor; the refusal or permission to sue is a matter in the discretion of the Court. Where a suit is brought in violation of s. 440 of the Code of Civil Procedure, or of the provisions of Act XL. of 1858, the proper course for a Court to pursue is to return the plaint, in order that the error may be rectified.—*Russick Das Bairagy v. Preonath Misree*, I. L. R., 10 Cal. 102. [Sep. 6, 1883.]

THE effect of s. 3 of Act X. of 1853 read with s. 440 of the Code of Civil Procedure is, that a minor plaintiff must not only always sue by his next friend, but when the suit relates to the minor's estate, the persons representing the minor must either hold a certificate under the Act, or must obtain the sanction of the Court for the suit to proceed. The mere admission of a plaint by the Court does not sufficiently indicate that sanction is accorded.—*Durga Churn Shaha v. Nilmoney Dass*, I. L. R., 10 Cal. 134. [Sep. 6, 1883.]

ALTHOUGH the proper and regular manner of giving permission to sue on behalf of a minor is by an order recorded in the order-sheet, there is, nevertheless, nothing in the

nature of the sanction provided by the s. 3 of Act XL. of 1858 which takes it out of the general rule of evidence, that sanction may be proved by express words or by implication. Where, on a construction of the plaint and the pleadings it is found that the minor is the real plaintiff, the mere fact of his not having been properly described in accordance with s. 440 of the Civil Procedure Code is no ground for setting aside a decree passed in the suit.—*Bhaba Pershad Khan v. Secretary of State for India*, 1. L. R., 14 Cal. 159. [Aug. 14, 1886.]

Extending to
Provincial S.
C. Courts.

441. Every application to the Court on behalf of a minor (other than an application under section 449) shall be made by his next friend, or his guardian for the suit.

Applications to be made by
next friend or guardian *ad
litem*.

Ditto.

442. If a plaint be filed by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented. Notice of such application shall be given to such person by the defendant; and the Court, after hearing his objections (if any), may make such order in the matter as it thinks fit.

Plaint filed without next
friend to be taken off file.
Costs.

S. 442 of the Civil Procedure Code refers to a case where the plaint on the face of it appears to have been filed by a person who was a minor. Where, in a suit, the plaintiffs described themselves as adults, and on the objection of the defendants an issue was raised and inquired into on the question of age, *held* that the order passed under the circumstances, although it professed to have been made under s. 442 of the Procedure Code, must be treated as one rejecting the plaint or dismissing the suit on the ground that the suit was instituted by persons who were established on the evidence to be minors, and was appealable as a decree within the meaning of s. 2 of the Code. The words, "rejecting the plaint," in s. 2, are not limited to the cases provided for in ss. 53, 54. *Held* also that the defendant, not having taken an objection to the suit on the ground of the minority of the plaintiffs, whilst it was pending in appeal to the High Court, were precluded from raising it on remand.—*Bani Ram Bhutt v. Ram Lal Dhukri*, 1. L. R., 18 Cal. 189. [Mar. 30, 1886.]

Ditto.

443. Where the defendant to a suit is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor, to put in the defence for such minor, and generally to act on his behalf in the conduct of the case.

Guardian *ad litem* to be ap-
pointed by Court.

A guardian for the suit is not a guardian of person or property within the meaning of the Indian Majority Act, 1875, section 3.

If no friend or relative of a minor defendant is willing to take out a certificate under Act XL. of 1858, and appear as guardian for the infant, the Judge should appoint an officer of the Court, or some respectable nominee or nominees of the minor, guardian to defend the suit. *Babajiban Kusaji v. Maruti* (11 Bom. H. C. R. 182) and *Dhoviha Lakshman v. Kusa* (6 Bom. H. C. R. 219) cited and followed.—*Issur Chunder Gupto v. Nobe Kristo Gupto*, 7 C. L. R. 497. [Sep. 15, 1880.]

WHERE no administrator of the estate of a minor is appointed under Act XX. of 1864, there is no objection to the appointment of a guardian *ad litem* under s. 443 of the Civil Procedure Code (Act X. of 1877) as amended by Act XII. of 1879 for the purpose of defending a suit against a minor. Act XX. of 1864, s. 2, has no bearing on the case of a next friend or guardian *ad litem* not claiming charge of the minor's estate. Neither Act XX. of 1864, nor the Civil Procedure Code (Act X. of 1877) as amended by Act XII. of 1879, empowers any Court to appoint a person, against his or her will, to be a next friend, guardian *ad litem*, administrator of the estate, or guardian of the person of the minor. S. 458 of the Civil Procedure Code (Act X. of 1877) is not, so far as regards payment or costs, applicable to any person appointed to act as guardian *ad litem* without his previous assent. S. 3, cl. b, of Act XV. of 1880, preserves jurisdiction to a Court to try a suit against a minor, notwithstanding the appointment of one of its officers to be the minor's guardian *ad litem*. The decision in *Mohan Ishwar v. Haku Rupa* (1. L. R., 4

Bom. 788) is superseded by Act XV. of 1880, s. 3, cl. b, in so far as that decision affected officers of the Court appointed guardians *ad litem* under s. 456 of Act X. of 1877 as amended by Act XII. of 1879. Inconvenience pointed out, of introducing into acts relating, and instituted as relating, to special jurisdiction only, provisions affecting civil procedure generally.—*Jadow Mulji v. Chhagan Raichand*, I. L. R., 5 Bom. 306. [Mar. 8, 1881.]

A CHEQUE was indorsed in blank by a European British subject who, at that time, was under twenty years of age and was temporarily residing, and not domiciled, in British India. It was subsequently dishonoured, and a suit was then brought by the Bank which had cashed the cheque to recover the amount from the indorser and the drawer. The former alleged that the drawer had requested him to sign his name to the cheque, saying that it was a mere matter of form, and he would not be liable for the amount, and that the Bank would only cash the cheque when indorsed by him, and in consequence he consented to indorse it, but that he did so without any intention of incurring liability as indorser, that he received no consideration, and that his endorsement was in blank and not in favour of the Bank, and was converted into a special indorsement without his knowledge and consent. The Court held that at the time of indorsement the indorser was a minor under English law, and dismissed the suit on the ground of minority. *Held* that, if the Court was satisfied of the fact of the defendant's minority, it should have complied with the provisions of s. 443 of the Civil Procedure Code. *Held* that, assuming the indorser to have been *sui juris*, the indorsement, taken in conjunction with the facts proved, established a contract by which the indorser was bound to pay the cheque. *Per* Straight, Offg. C.J., and Duthoit, J., that it was by no means clear or certain that there was any rule of international law recognizing the *lex loci contractus* as governing the capacity of the person to contract; but that, assuming such a rule to be established, the specific limitation of the Indian Majority Act (IX. of 1875) to "domiciled persons" necessarily excluded its application to European British subjects not domiciled in British India; that s. 11 of the Contract Act must be interpreted as declaring that the capacity of a person in point of age to enter into a binding contract was to be determined by his own personal law, wherever such law was to be found; that this rule was not affected by the Majority Act, so far as concerned persons temporarily residing but not domiciled in British India, whose contractual capacity was still left to be governed by the personal law of their personal domicile; and that such law, in the case of European British subjects, was the common law of England, which recognized twenty-one as the age of majority. *Per* Oldfield, J., that by the rule of the *jus gentium* as hitherto understood and recognized in England, the *lex loci* would govern in respect to the capacity to contract, but that in framing the Indian Majority Act, which was the *lex loci* on the subject in India, the Legislature would appear not to have adopted that rule, but, by limiting the operation of the Act to persons domiciled in British India, to have intentionally excluded from its operation persons not domiciled there, and to have left such persons to be governed by the law of their domicile. *Per* Brodhurst, J., that Act IX. of 1875 was intended by the Legislature to be applicable, and in fact was applicable, only to European British subjects domiciled in those parts of India referred to in s. 1, and that to any other European British subject whose domicile was in England, but who was temporarily residing in any part of India above alluded to, the privileges and disabilities of minority attached until he had attained the age of twenty-one years.—*Rohilkhand and Kumaon Bank v. Row*, I. L. R., 7 All. 490, [Aug. 16, 1884.]

IN a suit intended to be brought against some minors, the defendants were set out in the heading of the plaint as "Sharoda Sunderi Dehya, widow of Chundra Kanta, Chuckerbutty, deceased, mother and guardian of the minors" (setting out their names). At the filing of the plaint, the plaintiff applied for and obtained an order, making Sharoda guardian of the minors for the purposes of the suit. She was not, however, guardian of the property and persons of the minors under Act XL. of 1858. *Held* that the minors were not parties to the suits; that the order making Sharoda guardian *ad litem* was not made in a suit in which the minors were defendants; and that the suit must be dismissed as against the minors. *Held* also that neither the Code of Civil Procedure, nor the proviso of s. 3 of Act XL. of 1858, gives a plaintiff any power to institute a suit against a person named by himself as guardian *ad litem* on behalf of a minor, nor do they give to the Court the power of transferring, by a mere order made *ex parte*, an irregular proceeding, such as the one above mentioned, into a suit against the minor.—*Guru Churn Chuckerbutty v. Kali Kissen Tagore*, I. L. R., 11 Cal. 402. [Mar. 19, 1885.]

A SUIT was brought against a mother "for self and as guardian of A and B, minor sons of C, deceased," at a period when Act VIII. of 1869 was in force. The mother had not taken out a certificate under Act XL. of 1858, and no permission was recorded by the

Court allowing the mother to defend on behalf of the infants under the provisions of s. 3 of that Act. A decree was made in the suit, and in execution thereof certain property belonging to A and B was sold and purchased by X, the decree-holder. Subsequently, on A's coming of age, A and B, by A as his next friend, instituted a suit against X and their mother to recover the property so purchased by X. *Held* that, under the provisions of Act VIII. of 1859, it was not necessary to formally record sanction to the mother to defend under s. 1 of Act XL. of 1858; and that the fact of sanction having been given might be presumed by the Court, and that on the facts of the case such presumption was warranted. *Held* also that, though A and B were not properly described in the previous suit, it was a mere defect in form, and did not affect the merits of the case, being in accordance with the prevailing practice at the time when the suit was brought, and that there is no authority for saying that, when minors have been really sued, though in a wrong form, a decree against them would not be valid.—*Jogt Singh v. Kunj Behari Singh*, I. L. R., 11 Cal. 509. [April 24, 1885.]

THE plaint in a suit described one of the defendants thus: "N C, guardian on behalf of her own minor son S C." Upon the presentation of the plaint the Court directed the plaintiff to produce an affidavit to the effect that the mother of the minor defendant was his guardian, and an affidavit having been made that the "minor defendant" was under the guardianship of the mother, ordered a suit to be registered and summons to be issued on the defendants. N C then filed a written statement, alleging that she held the land in suit on behalf of the minor. *Held* that, having regard to the orders of the Court and the allegations made in the plaint and written statement, the suit was substantially brought against the minor, and the error of description in the plaint being one of mere form, could not, without proof of prejudice, invalidate a decree against him in the suit. *Held* also that the want of a formal order appointing a guardian *ad litem* was not fatal to the suit, when it appeared on the face of the proceedings that the Court had sanctioned the appointment. *Held* (O'Kinealy, J., dissenting) that the fact that an order appointing a guardian *ad litem* at the instance of the plaintiff was made *ex parte* was not necessarily fatal to the suit, unless it could be shown that the minor had in any manner been prejudiced thereby. *Per Mitter, J* (Petheram, C.J., concurring), that, although the matter of the appointment of a guardian *ad litem* is left to the discretion of the Court, it is always desirable that the appointment at the instance of the plaintiff should not be made, unless the minor, or his friends and relatives in whose care he may be, failed to move the Court for that purpose within a reasonable time after receiving notice of the institution of the suit.—*Suresh Chunder Wum Chowdhry v. Jugut Chunder Deb*, I. L. R., 14 Cal. 204. [Aug. 14, 1880.]

Extending to
Provincial S.
C. Courts.

444. Every order made in a suit or of any application before the

Order obtained without next friend or guardian may be discharged.

Court, in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, if the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

Costs.

Ditto.

445. Any person being of sound mind and full age may act as next friend of a minor, provided his interest is not adverse to that of such minor, and he is not a defendant in the suit.

Who may be next friend.

Ditto.

446. If the interest of the next friend of a minor is adverse to that of such minor, or if he is so connected with a defendant whose interest is adverse to that of the

Removal of next friend.

minor as to make it unlikely that the minor's interest will be properly protected by him, or if he does not do his duty, or, pending the suit, ceases to reside within British India, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court (if satisfied of the sufficiency of the cause assigned) may order the next friend to be removed accordingly.

Extending to
Provincial S.
C. Courts.

447. Unless otherwise ordered by the Court, a next friend shall not retire at his own request without first procuring a fit person to be put in his place, and giving security for the costs already incurred.

Retirement of next friend.

The application for the appointment of a new next friend shall be supported by affidavit showing the fitness of the person proposed, and also that he has no interest adverse to the minor.

Application for appointment of new next friend.

448. On the death or removal of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

Stay of proceeding on death or removal of next friend.

Ditto.

449. If the pleader of such minor omits, within reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or the matter at issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

Application for appointment of new next friend.

Ditto.

450. A minor plaintiff, or a minor not a party to a suit, on whose behalf an application is pending, on coming of age, must elect whether he will proceed with the suit or application.

Course to be followed by minor plaintiff or applicant on coming of age.

Ditto.

451. If he elects to proceed with it, he shall apply for an order discharging the next friend, and for leave to proceed in his own name.

Where he elects to proceed.

Ditto.

The title of the suit or application shall, in such case, be corrected so as to read thenceforth thus :

"A B, late a minor by C D, his next friend, but now of full age."

452. If he elects to abandon the suit or application, he shall, if a sole plaintiff, or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or respondent, or which may have been paid by his next friend.

Where he elects to abandon.
Costs.

Ditto.

453. Any application under section 451 or section 452 may be made *ex parte* ; and it must be proved by affidavit that the late minor has attained his full age.

Making and proving applications, under sections 451, 452.

Ditto.

454. A minor co-plaintiff, on coming of age, and desiring to repudiate the suit, must apply to have his name struck out as co-plaintiff ; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

When minor co-plaintiff coming of age desires to repudiate suit.

Ditto.

Notice of the application shall be served on the next friend, as well as on the defendant ; and it must be proved by affidavit that the late minor has attained his full age. The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

Costs.

If the late minor be a necessary party to the suit, the Court may direct him to be made a defendant.

455. If any minor, on attaining majority, can prove, to the satisfaction of the Court, that a suit instituted in his name by a next friend was unreasonable or improper, he may, if a sole plaintiff, apply to have the suit dismissed.

When suit unreasonable or improper.

Ditto.

Notice of the application shall be served on all the parties concerned : and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application, and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit.

Costs.

Extending to
Provincial S.
C. Courts.

456. An order for the appointment of a guardian for the suit may be obtained upon application in the name, and on behalf, of the minor or by the plaintiff. Such application must be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in question in the suit adverse to that of the minor, and that he is a fit person to be so appointed.

Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian : Provided that he has no interest adverse to that of the minor.

A SUBORDINATE Judge, who, under Act X. of 1877, s. 456, as amended by Act XII. of 1879, s. 73, appoints the nazir or any other officer of his Court to act as guardian of a minor plaintiff or defendant in a suit in his Court, has no jurisdiction to hear it, and pass a decree against that officer as guardian *ad litem* of the minor.—*Mohan Ishwar v. Haku Rupa*, I. L. R., 4 Bom. 638. [July 13, 1880.] See the following ruling.

WHERE no administrator of the estate of a minor is appointed under Act XX. of 1864, there is no objection to the appointment of a guardian *ad litem* under s. 443 of the Civil Procedure Code (Act X. of 1877), as amended by Act XII. of 1879, for the purpose of defending a suit against a minor. Act XX. of 1864, s. 2, has no bearing on the case of a next friend or guardian *ad litem* not claiming charge of the minor's estate. Neither Act XX. of 1864, nor the Civil Procedure Code (Act X. of 1877) (as amended by Act XII. of 1879), empowers any Court to appoint a person, against his or her will, to be a next friend, guardian *ad litem*, administrator of the estate, or guardian of the person of the minor. S. 458 of the Civil Procedure Code (Act X. of 1877) is not, so far as regards payment of costs, applicable to any person appointed to act as guardian *ad litem* without his previous assent. S. 3, cl. b of Act XV. of 1880, preserves jurisdiction to a Court to try a suit against a minor, notwithstanding the appointment of one of its officers to be the minor's guardian *ad litem*. The decision in *Mohan Ishwar v. Haku Rupa* (I. L. R., 8 Bom. 638) is superseded by Act XV. of 1880, s. 3, cl. b, in so far as that decision affected officers of the Court appointed guardians *ad litem* under s. 456 of Act X. of 1877 as amended by Act XII. of 1879. Inconvenience, pointed out, of introducing into Acts relating, and instituted as relating, to special jurisdiction only, provisions affecting civil procedure generally.—*Jadow Mulji v. Chhagan Raichand*, I. L. R., 5 Bom. 306. [Mar. 8, 1881.]

Ditto.

457. A co-defendant of sound mind and of full age may be appointed guardian for the suit, if he has no interest adverse to that of the minor ; but neither a plaintiff, nor a married woman, can be so appointed.

IN a suit brought by minor sons against their father, their mother cannot act as next friend.—*Guru Persaud Singh v. Gossain Munraj Puri*, I. L. R., 11 Cal. 738. [June 23, 1885.]

Ditto.

-458. If the guardian for the suit of a minor defendant does not do his duty, or if other sufficient ground be made to appear, the Court may remove him, and may order him to pay such costs as may have been occasioned to any party by his breach of duty.

WHERE no administrator of the estate of a minor is appointed under Act XX. of 1864, there is no objection to the appointment of a guardian *ad litem* under s. 443 of the Civil Procedure Code (Act X. of 1877), as amended by Act XII. of 1879, for the purpose of defending a suit against a minor. Act XX. of 1864, s. 2, has no bearing on the case of a next friend or guardian *ad litem* not claiming charge of the minor's estate. Neither Act XX. of 1864, nor the Civil Procedure Code (Act X. of 1877), as amended by Act XII. of 1879, empowers any Court to appoint a person, against his or her will, to be a

next friend, guardian *ad litem*, administrator of the estate, or guardian of the person of the minor. S. 458 of the Civil Procedure Code (Act X. of 1877) is not, so far as regards payment of costs, applicable to any person appointed to act as guardian *ad litem* without his previous assent. S. 3, cl. b, of Act XV. of 1880, preserves jurisdiction to a Court to try a suit against a minor, notwithstanding the appointment of one of its officers to be the minor's guardian *ad litem*. The decision in *Mohan Ishwar v. Haku Rupa* (I. L. R., 4 Bom. 638) is superseded by Act XV. of 1880, s. 3, cl. b, in so far as that decision affected officers of the Court appointed guardians *ad litem* under s. 456 of the Act X. of 1877 as amended by Act XII. of 1879. Inconvenience, pointed out, of introducing into Acts relating, and instituted as relating, to special jurisdiction only, provisions affecting civil procedure generally.—*Jadow Mulji v. Chhagan Raichand*, I. L. R., 5 Bom. 306. [Mar. 8, 1881.]

THE Civil Procedure Code does not authorize a Court to decree costs against the guardian of a defendant except in the case referred to in s. 458.—*Narasimha Rau v. Lachmi-pati Rau*, I. L. R., 3 Mad. 263. [Sep. 5, 1881.]

Appointment in place of guardian dying *pendente lite*.

459. If the guardian for the suit dies pending such suit, or is removed by the Court, the Court shall appoint a new guardian in his place.

Extending to Provincial S. C. Courts.

460. When the enforcement of a decree is applied for against the heir or representative, being a minor, of a deceased party, a guardian for the suit of such minor shall be appointed by the Court, and the decree-holder shall serve on such guardian notice of such application.

Ditto.

461. No sum of money or other thing shall be received or taken by a next friend or guardian for the suit on behalf of a minor, at any time before decree or order, unless he has first obtained the leave of the Court, and given security to its satisfaction that such money or other thing shall be duly accounted for to, and held for the benefit of, such minor.

Ditto.

462. No next friend or guardian for the suit shall, without the leave of the Court, enter into any agreement or compromise on behalf of a minor, with reference to the suit in which he acts as next friend or guardian.

Ditto.

Any such agreement or compromise entered into without the leave of the Court shall be voidable against all parties other than the minor.

THE conditions of s. 462 of the Civil Procedure Code, requiring the sanction of the Court to compromises entered into by the guardian *ad litem* of an infant suitor, are not sufficiently complied with by the Court passing a decree in the terms of a compromise presented by the guardian *ad litem*. A decree passed under such circumstances should be set aside.—*Rajagopal Takaya Naiker v. Muttupalem Chetti*, I. L. R., 3 Mad. 108. [Jan. 14, 1881.]

463. The provisions contained in section 440 to 462 (both inclusive) shall, *mutatis mutandis*, apply in the case of persons of unsound mind, adjudged to be so under Act No. XXXV. of 1858, or under any other law for the time being in force.

Ditto.

A GUARDIAN *ad litem* cannot be appointed under Chap. XXXI. of the Code of Civil Procedure for a lunatic defendant to whom Act XXXV. of 1858 applies, until the defendant has been adjudged a lunatic under the provisions of the said Act.—*Subbaya v. Buthaya*, I. L. R., 6 Mad. 280. [Mar. 16, 1883.]

464. Nothing in sections 442 to 462 applies to any minor or person of unsound mind, for whose person or property a guardian or manager has been appointed by the Court of Wards, or by the Civil Court under any local law.

Ditto.

IN a suit intended to be brought against some minors, the defendants were set out in the heading of the plaint as "Sharoda Sunderi Debya, widow of Chundra Kanta Chuckerbutty, deceased, mother and guardian of the minors" (setting out their names). At the filing of the plaint, the plaintiff applied for and obtained an order, making Sharoda guardian of the minors for the purposes of the suit. She was not, however, guardian of the property and persons of the minors under Act XL of 1858. *Held* that the minors were not parties to the suit; that the order making Sharoda guardian *ad litem* was not made in a suit in which the minors were defendants; and that the suit must be dismissed as against the minors. *Held* also that neither the Code of Civil Procedure, nor the proviso of s. 8 of Act XL of 1858, gives a plaintiff any power to institute a suit against a person named by himself as guardian *ad litem* on behalf of a minor, nor do they give the Court the power of transferring, by a mere order made *ex parte*, an irregular proceeding such as the one above mentioned into a suit against the minor.—Guru Churn Chuckerbutty v. Kali Kissen Tagore, 1. L. R., 11 Cal. 402. [Mar. 19, 1885.]

CHAPTER XXXII.

SUITS BY AND AGAINST MILITARY MEN.

Extending to
Provincial S.
C. Courts.

465. When any officer or soldier actually serving the Government in a military capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead.

The authority shall be in writing, and shall be signed by the officer or soldier in the presence of (a) his commanding officer, or the next subordinate officer, if the party be himself the commanding officer, or (b) where the officer or soldier is serving in military staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

When so filed, the countersignature shall be sufficient proof that the authority was duly executed, and that the officer or soldier by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

Explanation.—In this chapter the expression "commanding officer" means the officer in actual command for the time being of any regiment, corps, detachment, or depôt to which the officer or soldier belongs.

Ditto.

466. Any person authorized by an officer or a soldier to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer or soldier could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer or soldier.

Ditto.

467. Processes served upon any person authorized by an officer or a soldier, as in section 465, or upon any pleader appointed as aforesaid by such person to act for, or on behalf of, such officer or soldier, shall be as effectual as if they had been served on the party in person or on his pleader.

Ditto.

468. When an officer or a soldier is a defendant, the Court shall send a copy of the summons to his commanding officer for the purpose of being served on him.

The officer to whom such copy is sent, after causing it to be served on the person to whom it is addressed, if practicable, shall return it to the Court with the written acknowledgment of such person endorsed thereon.

If, from any cause, the copy cannot be so served, it shall be returned to the Court by which it was sent, with information of the cause which has prevented the service.

469. If, in the execution of a decree, a warrant of arrest or other process is to be executed within the limits of a cantonment, garrison, military station, or military bazar, the officer charged with the execution of such warrant or other process shall deliver the same to the commanding officer. Extending to Provincial S. C. Courts.

The commanding officer shall back the warrant or other process with his signature, and, in the case of a warrant of arrest, if the person named therein is within the limits of his command, shall cause him to be arrested and delivered to the officer so charged.

CHAPTER XXXIII.

INTERPLEADER.

470. When two or more persons claim adversely to one another the same payment or property from another person, whose only interest therein is that of a mere stakeholder, and who is ready to render it to the right owner, such stakeholder may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to whom the payment or property should be made or delivered, and of obtaining indemnity for himself : Ditto.

Provided that, if any suit is pending in which the rights of all parties can properly be decided, the stakeholder shall not institute a suit of interpleader.

471. In every suit of interpleader the plaintiff must, in addition to the other statements necessary for plaints, state— Ditto.

- (a) that the plaintiff has no interest in the thing claimed otherwise than as a mere stakeholder ;
 (b) the claims made by the defendants severally ; and
 (c) that there is no collusion between the plaintiff and any of the defendants.

472 When the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff must so pay or place it before he can be entitled to any order in the suit. Ditto.

473. At the first hearing the Court may— Ditto.

(a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit ;

or, if it thinks that justice or convenience so require,

(b) retain all parties until the final disposal of the suit ;

and, if it finds that the admissions of the parties or other evidence enable it,

(c) adjudicate the title to the thing claimed : or else it may

(d) direct the defendants to interplead one another by filing statements and entering into evidence for the purpose of bringing their respective claims before the Court, and shall adjudicate on such claims.

Extending to
Provincial S.
C. Courts.

474. Nothing in this chapter shall be taken to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claims through such principals or landlords.

Illustrations.

(a.) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader-suit against A and C.

(b.) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader-suit against A and C.

Ditto.

475. When the suit is properly instituted, the Court may provide for the plaintiff's costs by giving him a charge on the thing claimed or in some other effectual way.

Ditto.

476. If any of the defendants in an interpleader-suit is actually suing the stakeholder in respect of the subject of such suit, the Court in which the suit against the stakeholder is pending shall, on being duly informed by the Court which passed the decree in the interpleader-suit in favour of the stakeholder that such decree has been passed, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if, and so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

Costs.

PART IV.

PROVISIONAL REMEDIES.

CHAPTER XXXIV.

OF ARREST AND ATTACHMENT BEFORE JUDGMENT.

A.—Arrest before Judgment.

Extending to
Provincial S.
C. Courts
(except as
regards
immoveable
property).

477. If at any stage of any suit, other than a suit for the possession of immoveable property, the plaintiff satisfies the Court by affidavit or otherwise—

that the defendant, with intent to avoid or delay the plaintiff, or to avoid any process of the Court, or to obstruct or delay the execution of any decree that may be passed against him,

(a) has absconded or left the jurisdiction of the Court, or

(b) is about to abscond or to leave the jurisdiction of the Court, or

(c) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave British India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the plaintiff may apply to the Court that security be taken for the appearance of the defendant to answer any decree that may be passed against him in the suit.

Order to bring up defendant to show cause why he should not give security. **478.** If the Court, after examining the applicant, and making such further investigation as it thinks fit, is satisfied—

Extending to Provincial S. C. Courts (except as regards immoveable property).

that the defendant, with any such intent as aforesaid,

(a) has absconded or left the jurisdiction of the Court, or

(b) is about to abscond or to leave the jurisdiction of the Court, or

(c) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave British India under the circumstances last aforesaid,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance.

479. If the defendant fail to show such cause, the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to give security for his appearance at any time when called upon while the suit is pending, and until execution or satisfaction of any decree that may be passed against him in the suit.

Ditto.

The surety shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

Procedure in case of application by surety to be discharged.

480. The surety for the appearance of the defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

Ditto.

On such application being made, the Court shall summon the defendant to appear, or, if it thinks fit, may issue a warrant for his arrest in the first instance.

On the appearance of the defendant pursuant to the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

481. If the defendant fail to comply with any order under section 479 or section 480, the Court may commit him to jail until the decision of the suit, or, if judgment be given against the defendant, until the execution of the decree: Provided that no person shall be imprisoned under this section in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees:

Ditto.

Provided that no person shall be detained in prison under this section after he has complied with such order:

THE defendant was arrested before judgment, and, on the 5th February 1883, committed to jail under s. 481 of the Civil Procedure Code. On the 6th March following, a decree in the suit was passed against him. On the 28th July, the defendant being then still in jail under the order of the 5th February, the plaintiff took out a fresh warrant of arrest in execution of the decree, and sought to have the defendant further imprisoned for the full period of six months limited by s. 342 of the Code. Held that the defendant could be re-committed to jail, in execution of the decree, only for such a period as, together with the period of imprisonment that had elapsed since the passing of the decree, would

complete a period of six months, and that, consequently, he would be entitled to be liberated on the 5th September 1883. Imprisonment under s. 481 becomes, after decree, imprisonment in execution of the decree, and the imprisonment suffered after that date must consequently be taken into consideration in calculating the period of six months which, by s. 342 of the Code, is the limit allowed for an imprisonment in execution of a decree.—*Ghanushamdás Goorsámull v. Johárimull Kedárináth*, I. L. R., 7 Bom. 431. [Aug. 31, 1883.]

Extending to
Provincial S.
C. Courts
(except as
regards
immovable
property).—

482. The provisions of section 339 as to allowances payable for the subsistence of defendants arrested; subsistence of judgment-debtors shall apply to all defendants arrested under this chapter.

Ditto.

Application before judgment for security from defendant to satisfy decree, and, in default, for attachment of property.

B.—Attachment before Judgment.

483. If at any stage of any suit, the plaintiff satisfies the Court by affidavit or otherwise that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,

(a) is about to dispose of the whole or any part of his property, or to remove the same from the jurisdiction of the Court in which the suit is pending, or

(b) has quitted the jurisdiction of the Court, leaving therein property belonging to him,

the plaintiff may apply to the Court to call upon the defendant to furnish security to satisfy any decree that may be passed against him in such suit, and, on his failing to give such security, to direct that any portion of his property within the jurisdiction of the Court shall be attached until the further order of the Court.

The application shall, unless the Court otherwise directs, specify the property required to be attached, and the estimated value thereof.

A CREDITOR attached before judgment certain of his debtor's property. Between the date of attachment and the date of the decree subsequently obtained by the creditor, the property of the debtor became vested in the Official Assignee under a vesting order. The Official Assignee brought a suit to remove the attachment, and for an injunction restraining the sale of the property. The Court of first instance decreed the suit in favour of the Official Assignee. On the case coming up before a Full Bench, *held* (*Per* McDonell, Tottenham, and Prinsep, J.J.) that, where there has been an attachment prior to decree, and the property of a judgment-debtor subsequently becomes vested in the Official Assignee in insolvency previous to the decree, the vesting order will prevent such an attaching creditor from executing his decree against the property. *Per* Garth, C.J., and Mitter, J., *contra*, that, under the 34th chapter of Act XIV. of 1882, the Court had no power to remove the attachment before judgment, or stay the sale at the instance of the Official Assignee.—*Shib Kristo Shaha Chowdhry v. Miller* (A. B.), I. L. R., 10 Cal. 150. [Sep. 13, 1883.]

UNDER the provisions of ss. 483 and 484 of the Code of Civil Procedure, 1882, property of the defendant, which is not within the jurisdiction of the Court, cannot be attached before judgment.—*Krishnasami v. Engel*, I. L. R., 8 Mad. 20. [Nov. 7, 1884.]

Ditto.

484. If the Court, after examining the applicant, and making any further investigation which it thinks fit, is satisfied that the defendant is about to dispose of or remove his property with intent to obstruct or delay the execution of any decree that may be passed against him in the suit, or that he has, with such intent, quitted the jurisdiction of the Court, leaving therein property belonging to him, the Court may require him, within a time to be fixed by the Court, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when

Court may call on defendant to furnish security or show cause.

required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

The Court may also, in the order, direct the conditional attachment of the whole or any portion of the property specified in the application.

THE defendants were, on the 10th of March 1881, called upon, under s. 484 of the Civil Procedure Code (Act X. of 1877), to furnish security for the satisfaction of a decree that the plaintiff might obtain, against them, or to show cause, on the 28th March 1881, why security should not be furnished. To this direction the order was appended, which is provided by the form at the end of the Code of Civil Procedure, for a provisional attachment, under s. 484. The defendants, to avoid the attachment, gave security, on the 21st March 1881, for satisfaction of the decree, and the attachment was not carried out. On the 28th March 1881, they showed cause why security should not be furnished; but the Subordinate Judge, as security had been furnished, thought the matter was at an end, and that he could not cancel the security-bond. Held that the Subordinate Judge was wrong; the security so given was really not the security expressly provided under s. 484, and did not preclude the defendants from showing cause why no security should be furnished.—*Lotlikar v. Lotlikar*, I. L. R., 5 Bom. 643. [July 26, 1881.]

UNDER the provisions of ss. 483 and 484 of the Code of Civil Procedure, 1882, property of the defendant, which is not within the jurisdiction of the Court, cannot be attached before judgment.—*Krishnasami v. Engel*, I. L. R., 8 Mad. 20. [Nov. 7, 1884.]

485. If the defendant fail to show cause why he should not furnish

Attachment if cause not shown or security not furnished. within the time fixed by the Court, the Court may order that the property specified in the application, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, shall be attached.

Extending to Provincial S. C. Courts (except as regards immoveable property).

If the defendant show such cause or furnish the required security, and the property specified in the application or any portion of it has been attached, the Court shall order the attachment to be withdrawn.

486. The attachment shall be made in the manner herein provided for

Mode of making attachment. the attachment of property in execution of a decree for money.

Ditto.

487. If any claim be preferred to the property attached before judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for money.

Investigation of claims to property attached before judgment.

Ditto.

488. When an order of attachment before judgment is passed, the Court

Removal of attachment when security furnished or suit dismissed.

which passed the order shall remove the attachment whenever the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

Ditto.

489. Attachment before judgment shall not affect the rights, existing

Attachment not to affect rights of strangers, or bar decree-holder from applying for sale.

prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

Ditto.

490. Where property is under attachment by virtue of the provisions

Property attached under chapter not to be re-attached in execution of decree.

of this chapter, and a decree is given in favour of the plaintiff, it shall not be necessary to re-attach the property in execution of such decree.

Ditto.

C.—Compensation for improper Arrests or Attachment.

Extending to
Provincial S.
C. Courts
(except as
regards
immoveable
property).

491. If, in any suit in which an arrest or attachment has been effected, it appears to the Court that such arrest or attachment was applied for on insufficient grounds,

or if the suit of the plaintiff fails, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the arrest or attachment :

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

An award under this section shall bar any suit for compensation in respect of such arrest or attachment.

CHAPTER XXXV.

OF TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS.

A—Temporary Injunctions.

Cases in which temporary injunction may be granted.

492. If, in any suit, it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or is about, to remove or dispose of his property with intent to defraud his creditors,

the Court may, by order, grant a temporary injunction to restrain such act, or give such other order, for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property, as the Court thinks fit, or refuse such injunction or other order.

WHERE a Court made an order granting a temporary injunction under s. 492 of the Civil Procedure Code, without directing notice of the application for injunction to be issued to the other side, and its order directing stay of sale of property in execution was passed *ex parte*, without the other side being given an opportunity to show cause, *held* that the order was irregular. Where ancestral property was attached in execution of a decree, and a son of the judgment-debtor instituted a suit to establish his right to the property, and made an application for a temporary injunction directing stay of sale pending the decision of the suit, *held* that, inasmuch as what was advertised to be sold was the rights and interests of the plaintiff's father in the property, and it could not be said that the property was being "wrongfully sold in execution of a decree" and the application on the face of it disclosed no sufficient ground to warrant an order under s. 492 of the Civil Procedure Code being made as prayed, the temporary injunction ought not to have been granted.—*Amolak Ram v. Sahib Singh*, I. L. R., 7 All. 550. [Feb. 27, 1885.]

A CLAIM by R to certain property which had been attached by B in the course of execution-proceedings in the Court of the First Subordinate Judge of Dacca having been rejected, R instituted a suit in the Court of the Second Subordinate Judge to establish his title to the property. In that suit he applied to the Court in which his suit was brought for an injunction under s. 492 of the Civil Procedure Code to stay the sale of the property attached by B in the execution-proceedings; but that application was rejected, and R thereupon applied for and obtained from the Court of the First Subordinate Judge an order staying the sale of the attached property until the hearing of the suit brought by him to establish his right to it. *Held*, in an application under s. 622 of the Code, to set the latter

order aside, that s. 492 of the Code of 1882 has, and was intended to have, a wider application than s. 92 of Act VIII. of 1859 had, and provides a remedy where property is "in danger of being wrongfully sold;" if the circumstances justified it, an order could have been obtained under that section from the Court of the Second Subordinate Judge to stay the sale. There being this alteration in the law, and such a remedy provided, and no express provision in the Code for stay of execution by a Court executing a decree on the application of a third party, the order of the First Subordinate Judge was made without jurisdiction, and should be set aside.—In the Matter of the Petition of Brojendra Kumar Rai Chowdhuri; Brojendra Kumar Rai Chowdhuri v. Rup Lal Doss, I. L. R., 12 Cal. 515. [Feb. 1, 1886.]

IN granting or withholding an injunction, a Court should exercise a judicial discretion, and should weigh the amount of substantial mischief done or threatened to the plaintiff, and compare it with that which the injunction, if granted, would inflict upon the defendant. There is no such broad proposition as that one co-owner is entitled to an injunction restraining another co-owner from exceeding his rights, absolutely and without reference to the amount of damage to be sustained by the one side or the other from the granting or withholding of the injunction.—Shamnugger Tute Factory Co. v. Ram Narain Chatterjee, I. L. R., 14 Cal. 189. [April 20, 1886.]

493. In any suit for restraining the defendant from committing a breach of contract or other injury, whether compensation be claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

The Court may, by order, grant such injunction on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit, or refuse the same.

In case of disobedience, an injunction granted under this section or section 492 may be enforced by the imprisonment of the defendant for a term not exceeding six months, or the attachment of his property, or both.

No attachment under this section shall remain in force for more than one year, at the end of which time, if the defendant has not obeyed the injunction, the property attached may be sold, and out of the proceeds the Court may award to the plaintiff such compensation as it thinks fit, and may pay the balance (if any) to the defendant.

494. The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.

Before granting injunction, Court to direct notice to opposite party.

WHERE a Court made an order granting a temporary injunction under s. 492 of the Civil Procedure Code, without directing notice of the application for injunction to be issued to the other side, and its order directing stay of sale of property in execution was passed *ex parte*, without the other side being given an opportunity to show cause, held that the order was irregular. Where ancestral property was attached in execution of a decree, and a son of the judgment-debtor instituted a suit to establish his right to the property, and made an application for a temporary injunction directing stay of sale pending the decision of the suit, held that inasmuch as what was advertised to be sold was the rights and interests of the plaintiff's father in the property, and it could not be said that the property was being "wrongfully sold in execution of a decree," and the application on the face of it disclosed no sufficient ground to warrant an order under s. 492 of the Civil Procedure Code being made as prayed, the temporary injunction ought not to have been granted.—Amolak Ram v. Sahib Singh, I. L. R., 7 All. 550. [Feb. 27, 1885.]

495. An injunction directed to a Corporation or public Company is binding not only on the Corporation or Company itself, but also on all members and officers of the Corporation or Company whose personal action it seeks to restrain.

Injunction to Corporation binding on its members and officers.

496. Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order.

Order for injunction may be discharged, varied, or set aside.

497. If it appears to the Court that an injunction which it has granted was applied for on insufficient grounds, or

if, after the issue of the injunction, the suit is dismissed, or judgment is given against the plaintiff by default or otherwise, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such sum, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant, for the expense or injury caused to him by the issue of the injunction :

Provido.

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

An award under this section shall bar any suit for compensation in respect of the issue of the injunction.

B.—Interlocutory Orders.

498. The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner, and on such terms as it thinks fit, of any moveable property being the subject of such suit, which is subject to speedy and natural decay.

Power to order interim sale of perishable articles.

499. The Court may, on the application of any party to a suit, and on such terms as it thinks fit,

(a) make an order for the detention, preservation, or inspection of any property being the subject of such suit ;

(b) for all or any of the purposes aforesaid, authorize any person to enter upon or into any land or building in the possession of any other party to such suit, and

(c) for all or any of the purposes aforesaid, authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

The provisions hereinbefore contained as to execution of process shall apply, *mutatis mutandis*, to persons authorized to enter under this section.

An application for an order under s. 499 of the Code of Civil Procedure can only be made by a plaintiff after summons has been served and after reasonable notice of the intention to apply for the order has been given in writing to the defendant.—*Sengotha v. Rámásámi*, I. L. R., 7 Mad. 241. [Oct. 19, 1883.]

500. An application by the plaintiff for an order under section 498 or section 499 may be made after notice in writing to the defendant at any time after service of the summons.

An application by the defendant for a like order may be made after notice in writing to the plaintiff, and at any time after the applicant has appeared.

501. When land paying revenue to Government, or a tenure liable to sale, is the subject of a suit, if the party in possession of such land or tenure neglects to pay the Government-revenue or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure ;

and the Court in its decree may award against the defaulter the amount so paid, with interest thereupon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereupon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

502. When the subject-matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

CHAPTER XXXVI.

APPOINTMENT OF RECEIVERS.

503. Whenever it appears to the Court to be necessary for the realization, preservation, or better custody or management of any property, moveable or immoveable, the subject of a suit, or under attachment, the Court may, by order—

Extending to
Provincial S.
C. Courts.

(a) appoint a Receiver of such property,

and, if need be,

(b) remove the person in whose possession or custody the property may be from the possession or custody thereof ;

(c) commit the same to the custody or management of such Receiver ;

(d) grant to such Receiver such fee or commission on the rents and profits of the property by way of remuneration, and all such powers as to bringing and defending suits, and for the realization, management, protection, preservation, and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of instruments in writing, as the owner himself has, or such of those powers as the Court thinks fit.

Receiver's liabilities.

Every Receiver so appointed shall—

(e) give such security (if any) as the Court thinks fit duly to account for what he shall receive in respect of the property ;

(f) pass his accounts at such periods and in such form as the Court directs ;

(g) pay the balance due from him thereon as the Court directs ; and

(h) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Nothing in this section authorizes the Court to remove from the possession or custody of property under attachment any person whom the parties to the suit, or some or one of them, have or has not a present right so to remove.

By a decree in an administration-suit, A was appointed receiver "to manage the estate." A died, and by a subsequent order B was appointed receiver. One of the defendants in the suit applied to have B removed from the office of receiver on the ground of his alleged mismanagement of the estate. The application was refused. *Held* that the order of refusal was appealable, whether the former Code or the present Code of Civil Procedure was deemed to be applicable, being an order made in respect of a question arising between the parties to a suit relating to the execution of the decree.—*Mithibai v. Limji Nowroji Banaji*; *Harrivullbhdas Calliandas v. Ardasar Framji Moss*, I. L. R., 5 Bom. 45. [Dec. 3, 1880.]

No appeal lies from an order passed under s. 505 of the Civil Procedure Code by a Court subordinate to a District Court, submitting the name of a person sought to be appointed a receiver, together with the grounds for the nomination, such being only a preliminary order or expression of opinion, and not an order under s. 503. Nor does an appeal lie from the order of the District Court confirming such nomination, but the District Court ought, when the question is raised, to decide on the necessity for the appointment of a receiver, the words "or pass such other order as it thinks fit" in s. 505 being sufficient to include that question, and not merely to decide the fitness or otherwise of the person nominated to the office of receiver.—*Birajan Kooer v. Ram Churn Lall Mahata*, I. L. R., 7 Cal. 719. [July 20, 1881.]

A MANAGER appointed under s. 243 of the Act VIII. of 1859 is appointed merely to collect rent and other receipts and profits of the land, to carry on the existing state of affairs as the proprietor himself had been doing, and he has no power to issue notice of enhancement.—*Khetter Mohun Dutt v. Wells*, I. L. R., 8 Cal. 719. [April 4, 1882.]

A SERVANT of a firm, the business of which is being managed by a receiver appointed under s. 503 of the Code of Civil Procedure, 1877, has no preferential claim over the attaching creditor, on the assets of the firm for wages due before the appointment of the receiver.—*Short v. Pickering*, I. L. R., 6 Mad. 138. [Dec. 8, 1882.]

AN order refusing to appoint a receiver under s. 503 of the Code of Civil Procedure is not appealable.—*Subramanya v. Appasami*, I. L. R., 6 Mad. 355. [April 18, 23, 1883.]

THE powers conferred by s. 503 of the Civil Procedure Code are not to be exercised as a matter of course, and it is not a reason for allowing an application for the appointment of a receiver, that it can do no harm to appoint one. The discretion given by that section is one that should be used with the greatest care and caution. Because a plaintiff in his plaint makes violent and wholesale charges of waste and malversation against a defendant in possession of property as executor under a will or as the tenant for life, and upon this basis applies for a receiver to be appointed, it is not a necessary consequence that such appointment should be made. *Held* in this case, where the sons of a Hindu widow, in possession of her husband's estate under a will, sued their mother, as reversioners under the will, for possession of the estate, on the ground of mismanagement and waste, and on the same grounds applied for the appointment of a receiver under s. 503 of the Civil Procedure Code, that a receiver had been appointed on insufficient grounds.—*Srimati Prosonomoyi Devi v. Beni Madhab Rai*, I. L. R., 5 All. 556. [May 16, 1883.]

IN a suit brought in 1880 by the widow of a deceased partner, to wind up a partnership, the surviving partner was prohibited by the Court, at the instance of the plaintiff, from collecting debts due to the firm; but leave was given to apply for the recovery of debts which might become barred by limitation. After decree, on the application of the plaintiff, a receiver was appointed under s. 503 of the Code of Civil Procedure to collect

outstanding debts for the purpose of executing the decree. The receiver having sued in 1883 to recover a debt which was due to the firm in 1879, the suit was dismissed (1) on the ground that the appointment of a receiver after decree was *ultra vires*; (2) because the debt was barred by limitation. *Held* (1) that the appointment of the receiver was valid; (2) that under s. 15 of the Limitation Act the suit was not barred.—*Shunmugam v. Moidin*, I. L. R., 8 Mad. 229. [Dec. 9, 1884.]

ALTHOUGH, having regard to the provisions of ss. 23 and 52 of Bengal Act VIII. of 1868, s. 503 of the Civil Procedure Code would not apply to a suit brought under Bengal Act VIII. of 1869 merely for arrears of rent, there is no provision in that Act which excludes the operation of s. 503 when a suit is brought for recovery of the tenure itself. When, therefore, a suit was brought under Bengal Act VIII. of 1869 for arrears of rent and for ejectment of the defendant, *held* that a receiver of the rents and profits of the tenure might properly be appointed under the provision of s. 503 of the Civil Procedure Code.—*Kartik Nath Pandey v. Padmanund Singh*, I. L. R., 11 Cal. 496. [Mar. 31, 1885.]

IN 1879 a zamindar granted a lease of part of the zamindari for twenty years, reserving a rent of 18,000 rupees per annum. In 1881, the zamindari having been attached by a creditor, the zamindar granted a new lease in perpetuity in lieu of the former lease, reserving a rent of Rs. 12,000 a year. A receiver of the zamindari, having subsequently been appointed with full powers under the provisions of s. 503 of the Code of Civil Procedure, sued the lessee to recover rent at the rate reserved in the first lease from 1881. *Held* that the receiver was entitled to recover the rent claimed. The provisions of s. 503 of the Code of Civil Procedure were intended to declare that the receiver, in respect of all property which was or could be attached, had the powers of the owner as they existed at the time the property was brought under the orders of the Court by attachment, provided that they have not ceased by operation of law.—*Gopalasami v. Sankara*, I. L. R., 8 Mad. 418. [Mar. 31, 1885.]

A ZAMINDARI was attached in execution of certain decrees against the zamindar, and the plaintiff was appointed receiver with full powers, under s. 503 of the Code of Civil Procedure, to manage the zamindari. Before the appointment of the receiver, the zamindar had expended certain sums at the defendants' request to repair a tank for the irrigation of lands held by them in common with him. This suit was brought to recover the sums so expended. It was objected that the receiver could not maintain the suit on the ground that the sum sued for was neither the subject of a suit against the zamindar, nor property attached in execution of a decree against him. *Held* that the receiver could maintain the suit. It was also contended that the suit, whether viewed as one for contribution or upon a contract, was barred by limitation in respect of all payments made by the zamindar more than three years before the suit; and, further, that the receiver could only sue the defendants severally for their proportionate shares of the sum claimed. *Held* that the suit being for work and labour done at their request was not barred by limitation, and that the defendants were jointly and severally liable for the sum sued for.—*Sundaram v. Sankara*, I. L. R., 9 Mad 334. [April 5, 1886.]

D WAS appointed receiver in a partition-suit pending in the High Court by an order which, amongst other things, gave him power to let and set the immoveable property, or any part thereof, as he should think fit, and to take and use all such lawful and equitable means and remedies for recovering, realising, and obtaining payment of the rents, issues, and profits of the said immoveable property, and of the outstanding debts and claims by action, suit, or otherwise, as should be expedient. D, without special leave of the Court, served a notice to quit on certain tenants of the estate, who claimed to hold a permanent lease, and afterwards instituted a suit to eject them, also without special leave of the Court. *Held* that the order appointing him did not give him power to serve such notice or to institute such suit without the special leave of the Court, and that as he was appointed under the provisions of s. 503 of the Code of Civil Procedure, and not vested with the general powers referred to in that section, but only with the power referred to in the order appointing him, and as a receiver is not otherwise authorized to institute such suits without special leave of the Court, the suit must be dismissed.—*Drobomoyi Gupta v. C. T. Davis*, I. L. R., 14 Cal. 323. [Jan. 24, 1887.]

504. Where the property is land paying revenue to Government, or

Extending to Provincial S. C. Courts.

When Collector may be appointed Receiver. land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may appoint the Collector to be receiver of such property.

No appeal lies from an order passed under s. 505 of the Civil Procedure Code by a Court subordinate to a District Court, submitting the name of a person sought to be appointed a receiver, together with the grounds for the nomination, such being only a preliminary order or expression of opinion, and not an order under s. 503. Nor does an appeal lie from the order of the District Court confirming such nomination, but the District Court ought, when the question is raised, to decide on the necessity for the appointment of a receiver, the words "or pass such other order as it thinks fit" in s. 505 being sufficient to include that question, and not merely to decide the fitness or otherwise of the person nominated to the office of receiver.—*Birajan Kooer v. Ram Churn Lall Mahata*, I. L. R., 7 Cal. 719. [July 20, 1881.]

Extending to
Provincial S.
C. Courts.

505. The powers conferred by this chapter shall be exercised only by Courts subordinate under High Courts and District Courts: Provided that, whenever the Judge of a Court subordinate to a District Court considers it expedient that a Receiver should be appointed in any suit before him, he shall nominate such person as he considers fit for such appointment, and submit such person's name, with the grounds for the nomination, to the District Court, and the District Court shall authorize such Judge to appoint the person so nominated, or pass such other order as it thinks fit.

No appeal lies from an order passed under s. 505 of the Civil Procedure Code by a Court subordinate to a District Court, submitting the name of a person sought to be appointed a receiver, together with the grounds for the nomination, such being only a preliminary order or expression of opinion, and not an order under s. 503. Nor does an appeal lie from the order of the District Court confirming such nomination, but the District Court ought, when the question is raised, to decide on the necessity for the appointment of a receiver, the words "or pass such other order as it thinks fit" in s. 505 being sufficient to include that question, and not merely to decide the fitness or otherwise of the person nominated to the office of receiver.—*Birajan Kooer v. Ram Churn Lall Mahata*, I. L. R., 7 Cal. 719. [July 20, 1881.]

ALTHOUGH, having regard to the provisions of ss. 23 and 52 of Bengal Act VIII. of 1869, s. 503 of the Civil Procedure Code would not apply to a suit brought under Bengal Act VIII. of 1869 merely for arrears of rent, there is no provision in that Act which excludes the operation of s. 503 when a suit is brought for recovery of the tenure itself. When, therefore, a suit was brought under Bengal Act VIII. of 1869 for arrears of rent and for ejectment of the defendant, *held* that a receiver of the rents and profits of the tenure might properly be appointed under the provision of s. 503 of the Civil Procedure Code.—*Kartio Nath Pandey v. Padmanund Singh*, I. L. R., 11 Cal. 496. [Mar. 31, 1885.]

PART V. OF SPECIAL PROCEEDINGS.

CHAPTER XXXVI. REFERENCE TO ARBITRATION.

Ditto.

506. If all the parties to a suit desire that any matter in difference between them in the suit be referred to arbitration, they may, at any time before judgment is pronounced, apply in person, or by their respective pleaders specially authorized in writing in this behalf, to the Court for an order of reference.

Every such application shall be in writing; and shall state the particular matter sought to be referred.

APPLICATION for reference to arbitration must be made to the Court in writing by parties in person or by pleaders specially authorized.—*Ranee Roshun Jehan v. Syed Enayut Hossein and others*, W. R. Sp. 41. [Sep. 9, 1862.]

A MERE agreement to refer to arbitration, if it contain no acknowledgment of the plaintiff's right or possession, does not save limitation; but the time during which the case was before the arbitrators, and the plaintiff was trying in another form to enforce the award, may be deducted from the period of limitation.—W. R. Sp. 283. (L. R. 65). [June 18, 1864.]

A REGULAR (and not a summary) appeal lies to set aside an award of arbitration passed under s. 313 of Act VIII. of 1859 (corresponding with s. 506, Act X. of 1877).—W. R. Sp. Mfs. 33. [July 20, 1864.] And should be on the full stamp.—*Wolee Ali v. Bibee Misrun*, 12 W. R. 50. [June 15, 1869.] See *Lalla Ishuree Pershad and others v. Hur Bhunjun Tewaree and others*, 15 W. R., F. B., 9. [May 23, 1871.]

A PLAINTIFF must show special authority to assent to an arbitration on behalf of another plaintiff.—*Gour Chunder Puteetundo v. Joogul Chunder alias Shama Churn Ghose and others*, 1 W. R. 80. [Sep. 7, 1864.]

THE Court cannot legally allow a case, as regards an absent plaintiff, to be decided by reference to arbitration.—*Gour Chunder Puteetundo v. Joogul Chunder alias Shama Churn Ghose and others*, 1 W. R. 80. [Sep. 7, 1864.]

A PARTY, by appearing before arbitrators appointed without his consent, and in spite of his repeated remonstrance, does not forfeit his right to question the validity of the award.—*Sheenath alias Burray Kaka v. Ramnath alias Chotay Kaka*, 5 W. R., P. C. 21. [Dec. 22, 1865.] (P. C. 616). See also *Rash Beharee Roy and others v. Doorgabur Roy and others*, 14 W. R. 211. [Aug. 8, 1870.]

BOTH the Code of Procedure and the Panjáb Code require the consent of the parties to a reference to, and the appointment of, arbitrators.—*Sheenath alias Burray Kaka v. Ramnath alias Chotay Kaka*, 5 W. R., P. C. 21. [Dec. 22, 1865.] (P. C. R. 616). See also *Rash Beharee Roy and others v. Doorgabur Roy and others*, 14 W. R. 211. [Aug. 8, 1870.]

WHERE all the parties did not agree to an arbitration, the award is legal against those who did.—*Ram Soondur Mookerjee and others v. Ram Shurm Mookerjee and others*, 6 W. R. 25. [June 18, 1866.] See also *Rash Beharee Roy and others v. Doorgabur Roy and others*, 14 W. R. 211. [Aug. 8, 1870.] And cannot be converted into a final decree under Act VIII. of 1859, though it is evidence against any party who agreed to the reference.—*Beejoy Chunder Banerjee v. Bhyrub Chunder Banerjee*, 15 W. R. 427. [April 21, 1871.]

WHEN a case which has been referred in the Principal Sudder Amee's Court to arbitration is withdrawn by the Judge for trial in his own Court the Judge is not bound to refer it to arbitration.—*Aboo Mahomed and others v. Kishen Mohun Surma and others*, 6 W. R. 290. [Dec. 6, 1866.]

UNDER this section all parties materially interested must concur in the reference to arbitration.—*Bykunt Nath Chatterjee v. Shaikh Nuzur-oddeen*, 10 W. R. 171. [July 16, 1868.]

IT is very doubtful whether a Judge has power, under Act X. of 1859, to refer a case to arbitration.—*Moonshee Gazee v. Hameed Buksh*, 16 W. R. 160. [July 17, 1871.]

REFERENCE to arbitration cannot be made except on the recorded and expressed consent of both parties.—2 Hay 583 (Marshall 517). The consent of the pleaders is not sufficient.—*Moonshee Gazee v. Hameed Buksh*, 16 W. R. 160. [July 17, 1871.]

AN Appellate Court is competent to refer cases to arbitration.—*Russool Bibee v. Shaikh Jan Ali Chowdry*, 17 W. R. 31. [Dec. 1, 1871.] But see *Sreemutty Hachun Banoo and another v. Abdool Hakim and another*, 19 W. R. 321. [Mar. 20, 1873.] Also *Surjoo Pershad v. Kashee Rawut and another*, 21 W. R. 121. [Dec. 22, 1873.]

A REFERENCE to arbitration made under an order of Court cannot be revoked at the instance of a party.—*Nimonee Bose v. Mohima Chunder Dutt*, 17 W. R. 516. [April 12, 1872.]

No presumption can be raised against a party to a suit from his refusal to withdraw from the determination and submit to arbitration.—*Mohabeer Singh and others v. Dhujjoo Singh*, 20 W. R. 172. [June 14, 1873.]

AN Appellate Court has no power to refer a case to arbitration, even on consent of the parties.—*Juggeshur Dey v. Kiritartha Moyee Dossee*, 21 W. R. 210. [Jan. 24, 1874.] But see *Russool Behee v. Shaikh Jan Ali Chowdry*, 17 W. R. 31. [Dec. 1, 1871.]

NOR can the first Court, by consent of parties, refer so much of the matter in dispute which it has already determined, and which is pending in appeal.—*Gossain Dowlut Geer v. Bissessur Geer*, 22 W. R. 207. [June 12, 1874.]

AN Appellate Court, in remanding a case, cannot direct the first Court to call upon the parties to agree to arbitration, or on their failing to do so, to appoint arbitrators.—*Puna Bibee v. Khoda Buksh Beparee*, 22 W. R. 396. [July 30, 1874.]

WHERE an Appellate Court directed the first Court to call upon the parties to agree to arbitration, and the parties waived the irregularity, and consented to the matter being tried by arbitrators, held that they could not afterwards, on special appeal, object to the proceedings.—*Puna Bibee v. Khoda Buksh Beparee*, 22 W. R. 396. [July 30, 1874.]

WHERE, after a reference of certain suits to arbitration, the parties withdrew the first submission, and agreed to submit the same suits with other matters to arbitration, and before the arbitrators so appointed had arrived at a final conclusion, the parties by *solehnamah* compromised the whole of the subjects of dispute, and an award was drawn up according to this compromise, a decree corresponding with the award was at first made only in those suits which had been originally referred, and afterwards on the application of some of the parties, the effect of a decree was given to the remainder of the award, held that this application to give effect to the unenforced portion of the award ought to have been dismissed, but that as the parties concerned did not take steps to set the lower Courts right in this matter (*inter alia*), the High Court could not interfere, and that the effect of the lower Court's decision was to dispose of the award altogether, and not to divide it into two parts, of which one might form the foundation of a future judgment.—*Nem Roy v. Bharut Roy and another*, 22 W. R. 129. [May 26, 1876.]

UNDER ss. 523 and 525 of the Civil Procedure Code (Act X. of 1877) parties to a suit as well as persons not engaged in litigation may agree to refer matters in dispute between them to private arbitration without the intervention of the Court, and may apply to have the agreement filed; and the mere fact that a suit is pending with respect to the matters in dispute is not of itself a sufficient reason to induce the Court to refuse to file the agreement.—*Harivalabdás Kalliandás v. Utam Chand, Mánek Chand*, I. L. R., 4 Bom. 1. [Feb. 13, 1879.]

NOTWITHSTANDING that Chap. XXXVII. of Act X. of 1877 (in reference to arbitration) does not refer specially to suits brought under Act X. of 1859. Yet if both parties to a suit for a kabuliati brought under the latter Act agree to refer the matters in dispute between them to certain arbitrators named by them, and file a joint petition in the Court of the Deputy Collector, stating that they had so agreed, and praying that the case may be referred to such arbitrators, neither of them will be afterwards at liberty to object to a decree made, embodying the award of the arbitrators, on the ground that the reference to arbitration was irregular, and not warranted by any of the provisions of Act X. of 1877. When a case has been so referred, the arbitrators are at liberty to determine what appears to them to be a fair and equitable rate of rent, and notwithstanding the amount so found is less than that demanded by the plaintiff in his plaint, the Court out of which the reference issued is not at liberty on that ground to dismiss the suit, but is bound to order the defendant (with the alternative of eviction) to execute a kabuliati in favour of the plaintiff at the rate determined by the arbitrators to be fair and equitable.—*Khemna Gowala v. Budoloo Khan*, I. L. R., 6 Cal. 251. [July 8, 1880.]

THE Court has no power under the provisions of the Code of Civil Procedure to sanction an order passed by the arbitrators to whom a matter has been referred, making the payment of their fees a condition precedent to their hearing the reference.—*Roberts (H.) v. Steel (O.)*, 8 C. L. R. 439. [April 4, 1884.]

WHERE the parties agreed to refer a suit to arbitration, but no provision was made that a decision by the majority of arbitrators should be binding, and two of five arbitrators withdrew, held that a decision by the majority was invalid.—*Gurupáthappá v. Narasingappá*, I. L. R., 7 Mad. 174. [Sep. 24, 1883.]

AN appeal was preferred against a decree of an Original Court dismissing a suit, and the Appellate Court sent the case back for the purpose of certain evidence being taken, and certified to it. Pending that being done the parties applied to the Appellate Court to refer the case to arbitration, and that Court referred that application to the Original

Court for disposal, although the case was still pending on its own file for disposal. Subsequently another application was made to the Original Court to refer the case to arbitration, and on the 10th May the record was sent to the arbitrator with directions to submit his award within seven days. On the 12th September, as the award had not been sent in, the Original Court passed an order recalling the record, and subsequently the award of the arbitrator, dated the 12th September, was filed. The Original Court thereupon forwarded the record to the Appellate Court for its decision. Objections were taken to the award, but overruled, and the Appellate Court passed an order directing the case to be sent back to the Original Court, with orders to pass a formal decree in accordance with the award of the arbitrator. *Held* that a second appeal lay against the last-mentioned order, inasmuch as it amounted to a decree under the provisions of s. 2 of the Civil Procedure Code. *Held* also that the award was bad in law, because the time within which it was directed to be made had never been enlarged, and the Court's order of the 12th September recalling the record could not be taken as an indication that the time was enlarged. *Semble*, an Appellate Court has the power to refer a case to arbitration at the instance of the parties under s. 582 of the Code of Civil Procedure, 1882. *In re Sangaralingam Pillai* (I. L. R., 8 Mad. 78) cited; *Jugessur Dey v. Kritartho Moyee Dossee* (12 B. L. R. 266) cited and distinguished.—*Bhugwan Dass Marwari v. Nund Lal Sein*, I. L. R., 12 Cal. 173. [Aug. 10, 1885.]

On the 19th June 1884, an application for an order of reference was made, under s. 506 of the Civil Procedure Code (Act XIV. of 1882) by both parties to a suit. It was signed by both defendants and by the plaintiff's pleader. As the plaintiff's pleader had not been "specially authorized in writing" to join in the application, the Court postponed making any order of the application till the 23rd idem. On that day the first defendant did not attend the Court, but the plaintiff's pleader produced the requisite authority, and the Court made an order referring the suit to the decision of the arbitrator nominated in the application of the 19th. On the 27th June, the first defendant made an application to the Court to revoke the authority of the arbitrator, and appoint a new arbitrator in his place, on the ground that, after signing the application of the 19th, he had become aware of certain circumstances connected with the arbitrator which showed that he was not worthy of the confidence reposed in him. No final order was made upon this application till after the submission of the award, when it was rejected, on the ground that the charges of misconduct and partiality imputed to the arbitrator were not made out. *Held*, first, that the first defendant not having objected to the appointment of the arbitrator on or before the 23rd June 1884, when the order of reference was made, must be taken to have tacitly acquiesced in the course adopted by the Court, and that such acquiescence amounted to a fresh submission. The objections raised by the first defendant could only be considered after the submission of the award, and then only to the extent permitted by s. 521 of the Code of Civil Procedure (Act XIV. of 1882). When once a matter is referred to arbitration, it is not competent to the Court, under the second paragraph of s. 608 of the Code of Civil Procedure (Act XIV. of 1882), to "deal with the matter in difference between the parties, except as provided in Chapter XXXVII. of the Code. There is no section of that chapter which authorizes the Court to revoke the authority conferred on an arbitrator, and to appoint a new one, except in cases falling strictly within the purview of s. 510 of the Code, where "the scope and object of the reference cannot be executed." It is only in those cases, apparently, that the authority conferred on arbitrators can be revoked "for good cause," the cause being such as is contemplated in that section, as where "an arbitrator refuses, or neglects, or becomes incapable to act, or leaves British India under circumstances showing that he will probably not return to India at an early date." The enactment of the second paragraph of s. 508 of the Code of 1882, which does not occur in the corresponding section (315) of Act VIII. of 1859, has the effect of rigidly restricting the Courts to the exact procedure laid down when dealing with cases in which the appointment of a new arbitrator becomes necessary.—*Halimbhai Karimbhai v. Shankar Sai*, I. L. R., 10 Bom. 381. [Dec. 12, 1885.]

R M, PARTY to a suit, having authorized his agent to conduct the suit, the agent consented to the case being referred to arbitration by the Court. The arbitration was carried on to the knowledge and with the assent of R M. On an application by R M, under s. 622 of the Code of Civil Procedure, to set aside the award made by the arbitrators on the ground (1) that his pleader had not been authorized in writing, as required by s. 506 of the Code, to apply for arbitration, and (2) that he himself had not consented to the reference, *held* that, under the circumstances, R M was not entitled to relief.—*Unniraman v. Chathan*, I. L. R., 9 Mad. 451. [July 12, 1886.]

Nomination of arbitrator.

507. The arbitrator shall be nominated by the parties in such manner as may be agreed upon between them. Extending to Provincial S. C. Courts.

If the parties cannot agree with respect to such nomination, or if the Court to nominate person whom they nominate refuses to accept the arbitrator, and the parties desire that the nomination shall be made by the Court, the Court shall nominate the arbitrator.

BEFORE a Judge refers a case to arbitration, he should ascertain whether the parties nominated are willing to act: and till he has done so, any nomination of an arbitrator by him, without the approbation or consent of the parties, is illegal. But when a case has been referred to arbitration, after the preliminary steps have been properly taken, the Judge has the sole power of appointing fresh arbitrators in the room of such as refuse to act.—W. R. Sp. 338. [Jul. 9, 1864.] [L. R. 113.]

WHERE both parties could not agree in nominating an arbitrator, and the Judge nominated one under the section, it must be inferred that he did so at their desire.—Suroop Ram Deb v. Gobind Ram Deb, 7 W. R. 13. [Jan. 4, 1867.]

S. 522 of the Code of Civil Procedure, 1877, which provides that no appeal shall lie from a decree upon an award, except in so far as the decree is in excess of, or not in accordance with, the award, assumes that the award has been regularly and properly passed by arbitrators duly appointed. Where two of five arbitrators nominated by the parties to a suit, and appointed by the Court, had not consented before, and, after appointment, declined to act, and the Court appointed two arbitrators in their place against the consent of one of the parties to the suit, *held* that, under the circumstances, the appointment of the new arbitrators was not warranted by the provisions of s. 510 of the Code of Civil Procedure, and the order of reference to such arbitrators, the award made by them, and the decree passed upon the award, were illegal. *Held* also that the High Court could set aside the decree under the powers given by s. 622 of the Code of Civil Procedure.—Pugardin v. Moidin, 1 L. R., 6 Mad. 414. [April 13, 1882.]

Extending to
Provincial S.
C. Courts.

508. The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the delivery of the award, and specify such time in the order.

When once a matter is referred to arbitration, the Court shall not deal with it in the same suit, except as hereinafter provided.

WHERE the reference fixes no time for the award to be made, either party may hasten the proceedings by giving notice to the arbitrators that the award must be made, and an umpire appointed, within a reasonable time; but when the time elapsing after the notice has been actively employed by the arbitrators, and the delay has been owing to necessity which they could not control, the parties cannot recede from their submission by reason of the notice.—Pestonjee Nusserwanjee v. D. Manockjee and Co., 10 W. R. 51 (P. C.). [July 17, 1868.]

WHERE a reference to arbitration fixes no time for the arbitrators to make the award, the award itself falls to the ground.—Gunga Gobind Naek and others v. Kalee Prosunno Naek and others, 10 W. R. 206. [July 23, 1868.]

AN award cannot be set aside by the Court on the mere surmise that the arbitrator has been partial. After the parties to a suit have agreed to refer to arbitration, and the order of reference has been made by the Court under s. 508 of the Civil Procedure Code, neither of them can arbitrarily and on no sufficient ground withdraw from the agreement. Pestonjee Nusserwanjee v. Manockjee & Co. (12 Moo. I. A. 130) followed.—Nainsukh Rai v. Umada, 1 L. R., 7 All. 273. [Dec. 22, 1884.]

ON the 19th June 1884, an application for an order of reference was made, under s. 506 of the Civil Procedure Code (Act XIV. of 1882), by both parties to a suit. It was signed by both defendants and by the plaintiff's pleader. As the plaintiff's pleader had not been "specially authorized in writing" to join in the application, the Court postponed making any order of the application till the 23rd idem. On that day the first defendant did not attend the Court, but the plaintiff's pleader produced the requisite authority, and the Court made an order referring the suit to the decision of the arbitrator nominated in the application of the 19th. On the 27th June, the first defendant made an application to the Court to revoke the authority of the arbitrator, and appoint a new arbitrator in his place, on the ground that, after signing the application of the 19th, he had become aware of certain circumstances connected with the arbitrator which showed that he was not worthy of the confidence reposed in him. No final order was made upon this application till after

the submission of the award, when it was rejected, on the ground that the charges of misconduct and partiality imputed to the arbitrator were not made out. *Held*, first, that the first defendant not having objected to the appointment of the arbitrator on or before the 23rd June 1884, when the order of reference was made, must be taken to have tacitly acquiesced in the course adopted by the Court, and that such acquiescence amounted to a fresh submission. The objections raised by the first defendant could only be considered after the submission of the award, and then only to the extent permitted by s. 521 of the Code of Civil Procedure (Act XIV. of 1882). When once a matter is referred to arbitration, it is not competent to the Court, under the second paragraph of s. 508 of the Code of Civil Procedure (Act XIV. of 1882), to "deal with the matter in difference between the parties, except as provided in Chapter XXXVII. of the Code." There is no section of that chapter which authorizes the Court to revoke the authority conferred on an arbitrator, and to appoint a new one, except in cases falling strictly within the purview of s. 510 of the Code, where "the scope and object of the reference cannot be executed." It is only in those cases, apparently, that the authority conferred on arbitrators can be revoked "for good cause," the cause being such as is contemplated in that section, as where "an arbitrator refuses, or neglects, or becomes incapable to act, or leaves British India under circumstances showing that he will probably not return to India at an early date." The enactment of the second paragraph of s. 508 of the Code of 1882, which does not occur in the corresponding section (375) of Act VIII. of 1859, has the effect of rigidly restricting the Courts to the exact procedure laid down when dealing with cases in which the appointment of a new arbitrator becomes necessary.—*Halimbhai Karimbhai v. Shankar Sai*, I. L. R., 10 Bom. 381. [Dec. 12, 1885.]

IN an agreement to refer certain matters to arbitration, which was filed in Court under s. 523 of the Civil Procedure Code, and on which an order of reference was made by the Court, no provision was made for difference of opinion between the arbitrators, by appointing an umpire or otherwise. The arbitrators being unable to agree upon the matters referred, the Court, on the application of one of them, appointed an umpire, and directed that the award should be submitted on a particular date. An award was made by the umpire and one arbitrator, without the concurrence of the other arbitrator, and submitted to the Court, which passed a decree in accordance with its terms. On appeal by the defendant in the case, the District Judge reversed the decree. *Held* that an appeal would lie to the Judge from the decree of the first Court, where there had been no legal award such as the law contemplated. *Lachman Dass v. Brijpal* (I. L. R., 6 All. 174) referred to. *Held* that in the present case there had been no legal award such as the law contemplated, inasmuch as the agreement to refer gave the Court no power to appoint an umpire, and required that the award should be made by the arbitrators named by the parties. *Held* that s. 509 and other sections preceding s. 523 of the Civil Procedure Code, relating to the power of the Court to provide for difference of opinion among the arbitrators, were only made applicable to cases coming under s. 523, so far as their provisions were consistent with the agreement filed under that section. *Held* also that the defendant was not precluded from appealing to the Judge from the first Court's decree because he had not applied to set aside the award within the ten days allowed by art. 158, sch. ii. of the Limitation Act, inasmuch as that article applied to applications referred to in s. 522 of the Civil Procedure Code, i. e., applications to set aside an award on any of the grounds mentioned in s. 521, and the defendant did not contest the award on any of those grounds.—*Muhammad Abid v. Muhammad Asghar*, I. L. R., 8 All. 64. [Dec. 14, 1885.]

AN order of reference to arbitration was made on 21st January. Six weeks' time was allowed for the return of the award. No application was made for extension of time. The award having been returned on 8th May, the Court refused to give judgment in accordance with it under s. 522 of the Code of Civil Procedure on the ground that it was not valid. The plaintiffs now petitioned the High Court under s. 622 of the Code of Civil Procedure. *Held* that the award was invalid, and the Court had not failed to exercise jurisdiction within the meaning of s. 622 of the Code of Civil Procedure.—*Simson v. Venkatagopalam*, I. L. R., 9 Mad. 475. [April 12, 1886.]

THE law contained in ss 508 and 514 of the Civil Procedure Code requires that there shall be an express order of the Court fixing the time for delivery of the award, or for extending or enlarging such time; and the mere fact that the Court has passed a decree in accordance with the award cannot be taken as affording a presumption that an extension of time was given. An award which is invalid under s. 521 of the Civil Procedure Code, because not made within the period allowed by the Court, is not an award upon which the Court can make a decree, and a decree passed in accordance with such an award is not a decree in accordance with an award from which no appeal lies with reference to the ruling of the Full Bench in *Lachman Das v. Brijpal* (I. L. R., 6 All. 174).

Where objection to the validity of the award on the ground that it was made beyond the time allowed was not taken by the defendant in the first Court, *held* that he was not thereby estopped from raising the objection for the first time, in appeal, inasmuch as it was not shown that in the first Court he was aware of the defect, or had done anything to imply consent to extension of the time.—*Chuha Mal v. Hari Ram*, 1 L. R., 8 All. 548. [July 9, 1886.]

When reference is to two or more, order to provide for difference of opinion. **509.** If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators,

- (a) by the appointment of an umpire, or
- (b) by declaring that the decision shall be with the majority, if the major part of the arbitrators agree, or
- (c) by empowering the arbitrators to appoint an umpire, or
- (d) otherwise, as may be agreed between the parties; or, if they cannot agree, as the Court determines.

If an umpire is appointed, the Court shall fix such time as it thinks reasonable for the delivery of his award in case he is required to act.

PARTIAL disagreement of two arbitrators does not nullify their award as a whole.—*Sheik Ponaoolah and others v. Sheikh Tumceezooddeen and others*, 2 W. R. 32. [Jan. 10, 1865.]

AN ORDER of reference to arbitration should, as required by this section, provide for difference of opinion among the arbitrators and for decision by a majority.—*Futteh Singh and others v. Gango*, 4 W. R. 4. [Aug. 25, 1865.] See also *Haradhun Dutt v. Radhanath Shaha and others*, 10 W. R. 398 [Nov. 23, 1868]; *Nem Roy v. Bharut Roy and another*, 22 W. R. 129 [May 26, 1874].

WHERE parties do not agree to be bound by the act of the majority, the award must be unanimous.—*Baboo Surubjeet Narain Singh v. Baboo Gouree Pershad Narain Singh and another*, 7 W. R. 269 [Mar. 14, 1867]; *Junglee Ram v. Ram Heet Sahoy*, 19 W. R. 47 [Jan. 3, 1873]; *Nem Roy v. Bharut Roy and another*, 22 W. R. 129 [May 26, 1874].

A CASE cannot, in special appeal, be sent back to the arbitrators with a provision for difference of opinion, where the arbitrators having given in different awards, the case was tried anew by the first Court, whose decision has been affirmed by the lower Appellate Court.—*Thakoor Dass Chuckerbutty v. Ram Jeebun Chuckerbutty*, 14 W. R. 150. [July 19, 1870.]

WHEN a case is referred to the award of three arbitrators, an award signed by two is null and void, and ought not to be read as evidence in the case.—*Sev. 479*. See also *Rash Beharee Roy and others v. Doorgabur Roy and others*, 14 W. R. 211 [Aug. 8, 1870]; *Nem Roy v. Bharut Roy and another*, 22 W. R. 129 [May 26, 1874].

THE mere absence of a clause in the order of reference to arbitration, providing for a difference of opinion between the arbitrators, cannot vitiate the award where there is no such difference of opinion.—*Gour Chunder Bhuttacharjee v. Sodoy Chunder Nundee and others*, 17 W. R. 30. [Dec. 1, 1871.]

WHAT a party must do who contests the validity of an award on the ground that it was not completed within the time fixed by the Court.—*Russobl Bibee v. Shaik Jan Ali Chowdhry*, 17 W. R. 31. [Dec. 1, 1871.] But see *Sreemutty Hachun Banoo and another v. Abdool Hakim and another*, 19 W. R. 321. [Mar. 20, 1873.]

IN an agreement to refer certain matters to arbitration, which was filed in Court under s. 523 of the Civil Procedure Code, and on which an order of reference was made by the Court, no provision was made for difference of opinion between the arbitrators, by appointing an umpire or otherwise. The arbitrators being unable to agree upon the matters referred, the Court, on the application of one of them, appointed an umpire, and directed that the award should be submitted on a particular date. An award was made by the umpire and one arbitrator without the concurrence of the other arbitrator, and submitted to the Court, which passed a decree in accordance with its terms. On appeal by the defendant in the case, the District Judge reversed the decree. *Held* that an appeal would lie to the Judge from the decree of the first Court, where there had been no legal award such as the law contemplated. *Laahman Das v. Brijpal* (1 L. R., 6 All. 174) referred

to. *Held* that in the present case there had been no legal award such as the law contemplated, inasmuch as the agreement to refer gave the Court no power to appoint an umpire, and required that the award should be made by the arbitrators named by the parties. *Held* that s. 509 and the other sections preceding s. 523 of the Civil Procedure Code, relating to the power of the Court to provide for difference of opinion among the arbitrators, were only made applicable to cases coming under s. 523, so far as their provisions were consistent with the agreement filed under that section. *Held* also that the defendant was not precluded from appealing to the Judge from the first Court's decree because he had not applied to set aside the award within the ten days allowed by art. 158, sch. 2 of the Limitation Act, inasmuch as that article applied to applications referred to in s. 522 of the Civil Procedure Code, i. e., applications to set aside an award on any of the grounds mentioned in s. 521, and the defendant did not contest the award on any of those grounds.—*Muhammad Abid v. Muhammad Asghar*, 1 L. R., 8 All. 64. [Dec. 24, 1885.]

510. If the arbitrator, or, where there are more arbitrators than one, Extending to Provincial S. C. Courts.
Death, incapacity, &c., of any of the arbitrators, or the umpire, dies, or re-
arbitrators or umpire. fuses, or neglects, or becomes incapable to act, or
leaves British India under circumstances showing that he will probably not
return at an early date, the Court may, in its discretion, either appoint a new
arbitrator or umpire in the place of the person so dying, or refusing, or neg-
lecting, or becoming incapable to act, or leaving British India, or make an
order superseding the arbitration, and in such case shall proceed with the
suit.

AN arbitrator has full powers to retract his resignation of office before it is accept-
ed.—*Maharajah Joy Mungul Singh v. Mohun Ram Marwarie*, 15 W. R. 37. [Jan. 18, 1871.] *Held* by the Privy Council that an arbitrator who first tendered and then with-
drew his resignation did not formally divest himself of his character of arbitrator, and was
thereof not *functus officio* when he signed the award.—*Maharajah Joymungul Singh*
Bahadur v. Mohun Ram Marwarie, 23 W. R. 429 (P. C.). [Mar. 11, 1875.]

WHERE an arbitration failed, and the record came back to the Court, the Court was
held to have no power to dismiss the suit without giving notice to the parties or fixing a
date for the hearing of the suit.—*Sookram Doss Mohunt and others v. Nund Kishore Doss*
Mohunt and others, 22 W. R. 21. [Mar. 16, 1874.]

S. 522 of the Code of Civil Procedure, 1877, which provides that no appeal shall lie
from a decree upon an award, except in so far as the decree is in excess of, or not in accord-
ance with, the award, assumes that the award has been regularly and properly passed
by arbitrators duly appointed. Where two or five arbitrators nominated by the parties
to a suit, and appointed by the Court, had not consented before, and, after appointment,
declined to act, and the Court appointed two arbitrators in their place against the con-
sent of one of the parties to the suit, *held* that, under the circumstances, the appointment
of the new arbitrators was not warranted by the provisions of s. 510 of the Code of Civil
Procedure, and that the order of reference to such arbitrators, the award made by them, and
the decree passed upon the award, were illegal." *Held* also that the High Court could set
aside the decree under the powers given by s. 622 of the Code of Civil Procedure.—
Pugardin Ravutan v. Moidinsa Ravutan, 1 L. R., 6 Mad. 414. [April 13, 1882.]

It is an essential principle of the law of arbitration that the adjudication of disputes
by arbitration should be the result of the free consent of the arbitrators to act; and the
finality of the award is based entirely upon the principle that the arbitrators are judges
chosen by the parties themselves, and that such judges are willing to settle the disputes
referred to them. Where certain matters were referred to arbitrators who refused to act,
and the Court of first instance passed an order directing them to proceed and to make an
award, and they, on the passing of such order, made an award, *held* that all proceedings
taken by the arbitrators in obedience to the order of the Court directing them to arbitrate
against their will were null and void.—*Shibcharan v. Batiram*, 1 L. R., 7 All. 20. [July
17, 1884.]

A COURT of first instance to which issues have been remitted under s. 566 of the
Civil Procedure Code by the Appellate Court has only jurisdiction to try the issues remit-
ted, and is *functus officio* in other respects, and cannot make a reference of the case to
arbitration, which is only within the jurisdiction of the Appellate Court. *Gossain Dowlut*
Geer v. Bissessur Geer (22 W. R. 207) referred to. When a case has been referred to ar-
bitration, the presence of all the arbitrators at all meetings, and, above all, at the last
meeting when the final act of arbitration is done, is essential to the validity of the award.

Where a case was referred by a Court to the arbitration of three persons, and the parties to the reference agreed to be bound as to the matters in dispute by the decision of a majority of the arbitrators, and one of the arbitrators subsequently refused to act, and withdrew from the arbitration, *held* that the Court could not pass a decree on the award of the remaining arbitrators, and could only, under s. 510 of the Civil Procedure Code, appoint a new arbitrator, or supersede the arbitration; and proceed with the suit.—*Kazee Syud Nasir Ali v. Musammal Tinoo Dossia* (6 W. R. 95) and *Rohikhand and Kumaun Bank v. Row* (I. L. R., 6 All. 488) referred to.—*Nand Ram v. Fakir Chaud*, I. L. R., 7 All. 523. [Jan. 14, 1885.]

On the 19th June 1884, an application for an order of reference was made, under s. 506 of the Civil Procedure Code (Act XIV. of 1882) by both parties to a suit. It was signed by both defendants and by the plaintiff's pleader. As the plaintiff's pleader had not been "specially authorized in writing" to join in the application, the Court postponed making any order of the application till the 23rd idem. On that day the first defendant did not attend the Court, but the plaintiff's pleader produced the requisite authority, and the Court made an order referring the suit to the decision of the arbitrator nominated in the application of the 19th. On the 27th June, the first defendant made an application to the Court to revoke the authority of the arbitrator, and appoint a new arbitrator in his place, on the ground that, after signing the application of the 19th, he had become aware of certain circumstances connected with the arbitrator which showed that he was not worthy of the confidence reposed in him. No final order was made upon this application till after the submission of the award, when it was rejected, on the ground that the charges of misconduct and partiality imputed to the arbitrator were not made out. *Held*, first, that the first defendant not having objected to the appointment of the arbitrator on or before the 23rd June 1884, when the order of reference was made, must be taken to have tacitly acquiesced in the course adopted by the Court, and that such acquiescence amounted to a fresh submission. The objections raised by the first defendant could only be considered after the submission of the award, and then only to the extent permitted by s. 521 of the Code of Civil Procedure (Act XIV. of 1882). When once a matter is referred to arbitration, it is not competent to the Court, under the second paragraph of s. 508 of the Code of Civil Procedure (Act XIV. of 1882), to "deal with the matter in difference between the parties, except as provided in Chapter XXXVII. of the Code. There is no section of that chapter which authorizes the Court to revoke the authority conferred on an arbitrator, and to appoint a new one, except in cases falling strictly within the purview of s. 510 of the Code, where "the scope and object of the reference cannot be executed." It is only in those cases, apparently, that the authority conferred on arbitrators can be revoked "for good cause," the cause being such as is contemplated in that section, as where "an arbitrator refuses, or neglects, or becomes incapable to act, or leaves British India under circumstances showing that he will probably not return to India at an early date." The enactment of the second paragraph of s. 508 of the Code of 1882, which does not occur in the corresponding section (315) of Act VIII. of 1859, has the effect of rigidly restricting the Courts to the exact procedure laid down when dealing with cases in which the appointment of a new arbitrator becomes necessary.—*Halimblai Karimblai v. Shankar Sol*, I. L. R., 10 Bom. 381. [Dec. 12, 1885.]

511. Where the arbitrators are empowered by the order of reference

Appointment of umpire by Court. to appoint an umpire, and fail to do so, any of the parties may serve the arbitrators with a written notice to appoint an umpire, and if, within seven days after such notice has been served, or such further time as the Court may in each case allow, no umpire be appointed, the Court, upon the application of the party who has served such notice as aforesaid, may appoint an umpire.

THE appointment of an umpire under this section is required, where there are two or more arbitrators, to provide for any difference of opinion amongst them; but not where, with the consent of the Court, only one arbitrator has been appointed. *Mahabur Misser and others v. Juggur Nath Misser and others*, 25 W. R. 11. [Dec. 6, 1875.]

IN an agreement to refer certain matters to arbitration, which was filed in Court under s. 523 of the Civil Procedure Code, and on which an order of reference was made by the Court, no provision was made for difference of opinion between the arbitrators, by appointing an umpire or otherwise. The arbitrators being unable to agree upon the matters referred, the Court, on the application of one of them, appointed an umpire, and directed that the award should be submitted on a particular date. An award was made by the umpire and one arbitrator without the concurrence of the other arbitrator, and submitted

to the Court, which passed a decree in accordance with its terms. On appeal by the defendant in the case, the District Judge reversed the decree. *Held* that an appeal would lie to the Judge from the decree of the first Court, where there had been no legal award such as the law contemplated. *Lachman Das v. Brijpal* (I. L. R., 6 All. 174) referred to. *Held* that in the present case there had been no legal award such as the law contemplated, inasmuch as the agreement to refer gave the Court no power to appoint an umpire, and required that the award should be made by the arbitrators named by the parties. *Held* that s. 509 and the other sections preceding s. 523 of the Civil Procedure Code, relating to the power of the Court to provide for difference of opinion among the arbitrators, were only made applicable to cases coming under s. 523, so far as their provisions were consistent with the agreement filed under that section. *Held* also that the defendant was not precluded from appealing to the Judge from the first Court's decree because he had not applied to set aside the award within the ten days allowed by art. 158, sch. II. of the Limitation Act, inasmuch as that article applied to applications referred to in s. 522 of the Civil Procedure Code, i. e., applications to set aside an award on any of the grounds mentioned in s. 521, and the defendant did not contest the award on any of those grounds. —*Muhammad Abid v. Muhammad Asghar*, I. L. R., 8 All. 64. [Dec. 14, 1885.]

512. Every arbitrator or umpire appointed under section 509, section 510, or section 511, shall have the like powers as if his name had been inserted in the order of reference. Extending to Provincial S. C. Courts.

Powers of arbitrator or umpire appointed under sections 509, 510, 511.

513. The Court shall issue the same processes to the parties and witnesses whom the arbitrators or umpire desire or desires to examine, as the Court may issue in suits tried before it. Ditto.

Summoning witnesses.

Persons not attending in accordance with such process, or making any default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties, and punishments, by order of the Court, on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

Punishment for default, &c.

514. If, from the want of the necessary evidence or information, or from any other cause, the arbitrators cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either grant a further time, and from time to time enlarge the period for the delivery of the award, or make an order superseding the arbitration, and in such case shall proceed with the suit. Ditto.

Extension of time for making award.

Supersession of arbitration.

UNDER this section the time for delivery of an award may be extended at the discretion of the Court without the consent of the parties.—*Anund Mohun, Paul Chowdhry v. Ram Kishen Paul Chowdhry and others*, 2 W. R. 297. [April 28, 1865.]

APPLICATIONS for the extension of the period for the submission of an award and orders thereon should be made in writing and recorded. When a party has been prejudiced by having the time allowed for taking objections to an award curtailed by the Court, no appeal lies, but a review should be granted by the Court of first instance.—*Monji Premji Set v. Maliyakel Koyassan Koya Haji*, I. L. R., 3 Mad. 59. [Jan. 27, 1880.]

AN appeal was preferred against a decree of an Original Court dismissing a suit, and the Appellate Court sent the case back for the purpose of certain evidence being taken, and certified to it. Pending that being done, the parties applied to the Appellate Court to refer the case to arbitration, and that Court referred that application to the Original Court for disposal, although the case was still pending on its own file for disposal. Subsequently another application was made to the Original Court to refer the case to arbitration, and on the 10th May the record was sent to the arbitrator with directions to submit his award within seven days. On the 12th September, as the award had not been sent in, the Original Court passed an order, recalling the record, and subsequently the award of

the arbitrator, dated the 12th September, was filed. The Original Court thereupon forwarded the record to the Appellate Court for its decision. Objections were taken to the award, but overruled, and the Appellate Court passed an order directing the case to be sent back to the Original Court, with orders to pass a formal decree in accordance with the award of the arbitrator. *Held* that a second appeal lay against the last-mentioned order, inasmuch as it amounted to a decree under the provisions of s. 2 of the Civil Procedure Code. *Held* also, that the award was bad in law, because the time within which it was directed to be made had never been enlarged, and the Court's order of the 12th September recalling the record could not be taken as an indication that the time was enlarged. *Seemle*, an Appellate Court has the power to refer a case to arbitration at the instance of the parties under s. 582 of the Code of Civil Procedure, 1882. *In re Sangaralingam Pillai* (1. L. R. 3 Mad. 78) cited; *Jugessur Dey v. Kritartho Moyee Dosses*, (12 B. L. R. 266) cited and distinguished.—*Bhugwan Dass Marwari v. Nund Lal Sein*, 1. L. R., 12 Cal. 173. [Aug. 10, 1885.]

THE law contained in ss. 508 and 514 of the Civil Procedure Code requires that there shall be an express order of the Court fixing the time for delivery of the award, or for extending or enlarging such time; and the mere fact that the Court has passed a decree in accordance with the award cannot be taken as affording a presumption that an extension of time was given. An award which is in valid under s. 521 of the Civil Procedure Code, because not made within the period allowed by the Court, is not an award upon which the Court can make a decree, and a decree passed in accordance with such an award is not a decree in accordance with an award from which no appeal lies with reference to the ruling of the Full Bench in *Lachman Das v. Brijpal* (1. L. R., 6 All. 174). Where objection to the validity of the award on the ground that it was made beyond the time allowed was not taken by the defendant in the first Court, *held* that he was not thereby estopped from raising the objection for the first time in appeal, inasmuch as it was not shown that in the first Court he was aware of the defect, or had done anything to imply consent to extension of the time.—*Chuha Mal v. Hari Ram*, 1. L. R., 8 All. 548. [July 9, 1886.]

Extending to
Provincial S.
C. Courts.

When umpire may arbitrate in lieu of arbitrators.

515. When an umpire has been appointed, he may enter on the reference in the place of the arbitrators.

(a) if they have allowed the appointed time to expire without making an award, or

(b) when they have delivered to the Court or to the umpire a notice in writing, stating that they cannot agree.

AS IN the case of an arbitrator so in the case of an umpire a Court has power to extend the period within which the award is to be submitted. Where the parties prayed the Court to appoint two arbitrators and an umpire and to refer the case to them for decision, and undertook to abide by such decision as might be passed by them unanimously or by the majority of them, *held* that an award by the umpire alone, the arbitrators being unable to decide, was valid. *Held* also that the plaintiff, having appeared before the umpire, and taken no objection to the procedure of the umpire from March to August, was estopped from raising the objection, that an award of the umpire alone was invalid. The Court can extend the time allowed to an umpire under s. 509 of the Code.—*Kupu Ráu v. Venkatarāmāygar*, 1. L. R., 4 Mad. 311. [Oct 31, 1881.]

Ditto.

516. When an award in a suit has been made, the persons who made award to be signed and it shall sign it, and cause it to be filed in Court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

A CIVIL Court's judgment cannot affect the rights of parties as declared in an award.—*Anund Mohun Paul Chowdhry v. Ram Kishen Paul Chowdhry and others*, 2. W. R. 297. [April 28, 1865.]

A COURT cannot reserve permission to a plaintiff to bring a fresh suit for the matter of an arbitration award, except under s. 97, Act VI., 1859 (corresponding with ss. 373 and 514, Act XIV., 1882).—*Anund Mohun Paul Chowdhry v. Ram Kishen Paul Chowdhry and others*, 2 W. R. 297. [April 28, 1865.]

ARBITRATORS should give separate awards in a case referred to them by the Judge, and on other matters referred to them by the parties, instead of bringing them all up and giving a general award.—Roghoo Nundun Lall Sahoo v. Bunwaree Lall Sahoo, 3 W. R., Mis., 27. [Aug. 7, 1865.]

A CIVIL COURT acts illegally if deciding a case on its merits after an arbitration-award.—Shitauath Biswas and others v. Kishen Mohun Mookerjee and others, 5 W. R. 130. [Mar. 6, 1866.] See also Haradhun Dutt v. Radhanath Shaha and others, 10 W. R. 398. [Nov. 23, 1868.]

IN A suit pending before arbitrators, an appellant who is made a co-plaintiff on application, and makes no objection to the arbitration, is bound by the award.—Shitanath Biswas and others v. Kishen Mohun Mookerjee and others, 5 W. R. 130. [Mar. 6, 1866.]

AN arbitration-award cannot change the nature of the claim, and convert into a simple debt cognizable by a Civil Court a claim for moneys collected by defendant as *tashildar*.—Shitanath Biswas and others v. Kishen Mohun Mookerjee and others, 5 W. R. 130. [Mar. 6, 1866.]

AN arbitration-award is not legal if not signed by the arbitrators sitting together at one place and at the same time.—Maharajah Joy Mungul, In the Matter of, 11 W. R. 433 [May 5, 1869]; Maharajah Sir Joy Mungul Singh v. Mohun Ram Marwaree and another, 12 W. R. 397. [Sep. 14, 1869.]

A COURT may look into the whole of an arbitration-record, and set aside the award on reasonable presumption of misconduct (*i.e.*, because it was in opposition to the testimony of witnesses whom the arbitrators accepted and believed).—Puresanath Dey and another v. Nobin Chunder Dutt, 12 W. R. 93. [June 28, 1869.] See Bykunt Nath Mookerjee v. Prionath Ghose, 22 W. R. 447. [Aug. 18, 1874.]

AN arbitration-award must be one single instrument complete in itself.—Maharajah Sir Joy Mungul Singh v. Mohun Ram Marwaree and another, 12 W. R. 397. [Sep. 14, 1869.]

AN arbitrator should not allow documents entrusted to him by the Court to be removed from the *nuthee*, but the award should, under this section, be accompanied by all the proceedings, depositions, and exhibits in the suit.—Maharajah Sir Joy Mungul Singh v. Mohun Ram Marwaree and others, 12 W. R. 397. [Sep. 14, 1869.]

A MUNSIF has no jurisdiction to entertain an application and pass an order on the enforcement of an arbitration-award relating to the determination of rent.—Altuf Hossein v. Grish Chunder Roy, 15 W. R. 556. [May 25, 1871.]

AN arbitration-award is not binding on an intervenor as a decree in a suit disposed of by a regular suit.—Haree Pershad Mundal and others v. Boishtub Doss Aga Bawajee and another, 17 W. R. 233. [Feb. 15, 1872.]

AN appeal lies when an arbitration-award is questioned on the ground of there having been no valid submission to arbitration.—Janglee Ram v. Ram Hoot Sahoy, 19 W. R. 47. [Jan. 3, 1873.]

WHERE an arbitrator imported into his proceedings a previous inquiry alleged to have been made by him, and relied upon admissions made in the former proceedings, his award was held to be bad, and the decision based thereon set aside.—Kanheye Chand Gossamee v. Ram Chunder Gossamee and others, 24 W. R. 81. [May 19, 1875.]

BOTH parties having agreed to the appointment of arbitrators to determine their rights in dispute according to the terms of a will, and it being contended by the appellant that it was miscarriage on the part of the arbitrators to make their award without having had the whole of the will before them, their Lordships came to the conclusion that, as the appellant, having a clear knowledge of the circumstances on which he might found an objection to the arbitrators proceeding to make their award, did submit to the arbitration going on, and allowed the arbitrators to deal with the case as it stood before them, taking his chance of the decision being more or less favourable to himself, it was too late for him, after the award had been made, and on the application to file the award, to insist on this objection to the filing of the award.—Chowdhry Murtaza Hossein v. Mussumat Bibi Bechuaniassa, 26 W. R. 109 (P.O.). [July 13, 1876.]

THE act of an arbitrator, in handing in an award to the proper officer of the Court, for the purpose of the award being filed, cannot be considered as an 'application' within the meaning of the Limitation Act.—Roberts v. Harrison, 1. L. R., 7 Cal. 333. [June 6, 1881.]

Extending to
Provincial S.
C. Courts.

517. Upon any reference by an order of the Court, the arbitrators or umpire may, with the consent of the Court, state the award as to the whole or any part thereof in the form of a special case for the opinion of the Court; and the Court shall deliver its opinion thereon; and such opinion shall be added to, and form part of, the award.

Ditto.

Court may, on application, modify or correct award in certain cases.

518. The Court may, by order, modify or correct an award,

(a) where it appears that a part of the award is, upon a matter not referred to arbitration, provided such part can be separated from the other part, and does not affect the decision on the matter referred, or

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.

THE arbitrators to whom the matters in difference in two suits for money were referred to arbitration made an award for payment to the plaintiff of certain sums by the defendant, and further directed that these sums should be paid by certain instalments. The plaintiff preferred objections to the award, in so far as it directed payment by instalments; and the Court, holding that the arbitrators had no power to make such a direction, modified the award to that extent, under s. 518 of the Civil Procedure Code. On appeal, the District Judge, while allowing the power of the arbitrators to direct payment by instalments, reduced the number of instalments which had been fixed. *Held* that the decree of the first Court not being in accordance with the award, an appeal lay to the Judge, with reference to s. 522 of the Code. *Held* also that as it was clear that the reference to arbitration gave the arbitrators full powers, not only as to the amount to be paid, but also as to the manner of payment, the lower Appellate Court was wrong in reducing the number of instalments which had been fixed. *Per Mahmood, J.*—The word “award” used in the last sentence of s. 522 of the Code must be understood to mean an award as given by the arbitrators, and not as amended by the Court under s. 518. The words “in excess of, or not in accordance with, the award,” used in s. 522, were intended to enable the Court of appeal to check the improper use of the power conferred by s. 518.—*Jawahar Singh v. Mul Raj*, I. L. R., 8 All. 449. [May 5, 1886.]

Ditto.

519. The Court may also make such order as it thinks fit respecting the

Order as to costs of arbitration.

costs of the arbitration, if any question arise respecting such costs, and the award contain no sufficient provision concerning them.

Ditto.

520. The Court may remit the award or any matter referred to

When award or matter referred to arbitration may be remitted.

arbitration to the reconsideration of the same arbitrators or umpire, upon such terms as it thinks fit,

(a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration;

(b) where the award is so indefinite as to be incapable of execution;

(c) where an objection to the legality of the award is apparent upon the face of it.

S. 323, Act VIII., 1859 (corresponding with s. 520, Act XIV., 1882), authorizes a Court to remand a case to arbitrators for reconsideration when there are mistakes which it cannot amend; and if the arbitrators refuse to reconsider their award, it becomes null and void without proof of corruption or misconduct.—*Mohun Kishen and others v. Bhoobun Shyam and others*, 7 W. R. 406. [April 24, 1867.]

WHERE matters in dispute are referred to arbitration, and it is found that one question at issue is omitted from the reference, and that the award contains no decision thereon, the party interested should bring the omission to the notice of the Court; if he fails to do so, the Court may pass any order or come to any decision on that point.—*Raj Narain Roy v. Juggessur Mookerjee and others*, 14 W. R. 247. [Aug. 23, 1870.]

THIS section does not authorize a Court to remit a case to the arbitrators except as to matters in difference between the parties.—*Taranath Chowdry v. Manick Chunder Doss*, 14 W. R. 469. [Dec. 16, 1870.]

AN award of arbitrators on a matter not in difference between the parties, nor referred to them, is null and void for want of jurisdiction, notwithstanding that it has been confirmed by a judgment of Court passed in accordance therewith.—*Moshahel Singh v. Konomutty Bewa* and another, 15 W. R. 172. [Feb. 20, 1871.]

THE plaintiff in this suit sued the defendants to recover certain moneys presented to him on his marriage, which he alleged the defendants had received and appropriated to their own use. The defendants denied that they had received such moneys, but admitted that such moneys had been credited by the plaintiff's father to the firm in which they, the plaintiff, and the plaintiff's father were jointly interested, against a larger amount of moneys belonging to the firm which had been expended on the plaintiff's marriage. The parties agreed to refer the matter in dispute between them to arbitration, and to abide by the decision of the arbitrator. The arbitrator decided that the plaintiff could not recover the moneys he sued for, and which had been credited to the firm of which he was a partner, as a larger sum had been expended on his marriage out of the funds of the firm. The plaintiff obtained the opinions of certain *pandits* to the effect that, under Hindu law, gifts on marriage are regarded as separate acquisitions, and prayed that the Munsif would remit the award with these opinions to the arbitrator. The Munsif remitted the award with the opinions, requesting the arbitrator to consider them, and to return his opinion in writing within a certain period. The arbitrator having refused to act further, the Munsif proceeded to determine the suit, and gave the plaintiff a decree on the ground that, in a joint Hindu family, presents received on marriage do not fall into the common fund. *Held* (Pearson, J., dissenting) that there being no illegality apparent on the face of the award, the Munsif was not justified in remitting the award, or in setting the award aside and proceeding to determine the suit himself, but that he should have passed judgment in accordance with the award.—*Nanak Chand v. Ram Narayan*, 1 L. R., 2 All. 181. [Mar. 11, 1871.]

A COURT was held to have done right in refusing to permit the filing of an arbitration-award which was not complete in itself, and which, as a whole, the parties had not agreed to.—*Raj Chunder Roy and others v. Brojendra Coomar Roy Chowdhry and others*, 21 W. R. 182. [Dec. 17, 1873.]

WHERE, in a suit for the filing of an award made on a private reference to arbitration, the Court of first instance, holding that there was no reason to remit such award to the reconsideration of the arbitrator under the provisions of Act X. of 1877, s. 520, or to set it aside under s. 521, did not proceed to give judgment according to such award followed by a decree, but merely directed that such award should be filed, *held* that its order was not appealable as a decree or as an order.—*Ramadhin v. Mahesh*, 1 L. R., 2 All. 471. [Nov. 17, 1879.]

THE sharers of a joint undivided estate agreed in writing that such estate should be partitioned and the accounts thereof settled by arbitration, and named one of such sharers as arbitrator, and agreed that he should settle all the accounts, show the surplus at each sharer's credit, and prepare lots, after partition of the lands and houses comprehended in such estate, and have them drawn within one year from the completion of the partition. Subsequently one of such sharers applied, under s. 523 of Act X. of 1877, to have such agreement filed in Court. The other sharers not objecting to this course, such agreement was filed accordingly, and the case was referred to such arbitrator. The arbitrator made an award, whereby he partitioned such estate into lots, assigning some only of such lots by name, and wherein he stated that he had not been able to settle the accounts owing to the default of the parties, and that, considering that the partition should take effect without any delay, he did not ask for further time. He further stated that "all the parties state that they will adjust the accounts after renewing the agreement," and he requested that the unassigned lots might be drawn in Court. The Court made an order confirming the award, and, it being objected that the settlement of the accounts should not be postponed, but that they should be settled as agreed, directed that the arbitrator should settle the accounts, and gave him a year's time for that purpose, and, some of the parties not being willing to draw the unassigned lots, directed the distribution of such lots "in reference to the age and number" of the sharers. *Held* that such order was a "decree" within the meaning of ss. 2 and 522 of Act X. of 1877: that the arbitrator should himself have drawn such lots, or he should have made the parties draw them; but, inasmuch as it would not have strained the agreement to have such lots drawn in Court, and no objection had been taken to the arbitrator not having himself drawn them, it was not incumbent on the Court to have remitted the award in order that the

arbitrator might have drawn them: that the Court, however, should not have distributed such lots in the manner it had done, but should have drawn a lot for each person, and in acting as it had done it had acted contrary to the award, and for that reason its decree could not be maintained, and that, in confirming the award before the accounts had been settled and an award made in respect thereof, the Court had acted erroneously, inasmuch as the award had left undetermined a very important matter, viz., the settlement of the accounts, and the Court should, under s. 520 of Act X. of 1877, have remitted the award for the reconsideration of the arbitrator, and, as it had power to remit it upon such terms as it thought fit, the Court could have allowed one year, if necessary, for the settlement of the accounts; and on this account, and also because the Court had made an order postponing the settlement of the accounts, and thereby made an order contrary to, and in excess of the award, its decree must be reversed.—*Sadik Ali Khan v. Imdad Ali Khan*, I. L. R., 3 All. 286. [Nov. 16, 1880.]

AN award was remitted under s. 520 of Act X. of 1877. The arbitrators refused to reconsider it, and the Court thereupon proceeded with the suit, and gave the plaintiffs a decree. The defendants appealed from such decree on the ground, amongst others, that the award had been improperly remitted under s. 520. *Held* that the question whether the award had been properly remitted under s. 520 or not could be entertained in such appeal. The worshippers at a public mosque can maintain a suit to restrain the superintendents of such mosque from using it or its appurtenant rooms for purposes other than those for which they were intended to be used, and from doing acts which are likely to obstruct worshippers in entering or leaving such mosque.—*Abdul Rahman v. Yar Muhammad*, I. L. R., 3 All. 636. [Mar. 14, 1881.]

THE plaintiff in a suit, which had been referred to arbitration, offered before the arbitrator to be bound by the evidence of the defendant given on a certain oath. With the arbitrator's consent the defendant accepted such offer, and gave evidence on such oath. The arbitrator made an award in accordance with the evidence so given. The plaintiff objected to the award, not on any of the grounds mentioned in ss. 520 and 521 of the Civil Procedure Code, but on the ground that the procedure of the arbitrator had been illegal. The Court disallowed this objection, and gave a judgment and decree in accordance with the award. *Held* by Straight, J., that such decree, being in accordance with the award, was not appealable. *Held* by Stuart, C.J., that the award not being open to objection on any of the grounds mentioned in ss. 520 and 521 of the Civil Procedure Code, and the decree being in accordance with the award, the decree was not appealable. *Held* by Oldfield, J., that the procedure adopted by the arbitrator being illegal, not being warranted by the Oaths Act, and there being in reality no award within the meaning of the Civil Procedure Code, the decree therefore was appealable. *Per* Stuart, C.J., that the procedure of the arbitrator did not require to be warranted by the Oaths Act, as he was entitled by virtue of his office to proceed as he did.—*Bhagirath v. Ram Ghulam*, I. L. R., 4 All. 283. [Feb. 8, 1882.]

WHERE an application was made to a Subordinate Judge to file an award, and an objection was taken that the arbitrators had made their award several months before the date of the one sought to be filed, thus impeaching the identity of the award, and the Subordinate Judge, after an inquiry with regard to the several objections, ordered the award to be filed, *held* that the order of the Subordinate Judge should be set aside, or the award be deemed not to have been filed. The only objections which the Court can inquire into under ss. 525 and 526 of the Civil Procedure Code (Act XIV. of 1882) are those which are specified in ss. 520 and 521, and these relate to cases in which the reference and the award are accepted facts, but where the objection denies the *factum* of the particular award sought to be filed, and the objection does not seem to be frivolous, but one giving rise to inquiry into difficult questions of law and fact, it is not competent for the Court to deal with that objection under ss. 525 and 526. In such a case the Court should leave the applicant to a regular suit on the award as the basis of his cause of action wherein the party urging the objection will have the advantage of being defendant rather than a plaintiff, and of having an appeal open to him in the event of an unfavourable decision.—*Samal Nathu v. Jaishankar Dalsukram*, I. L. R., 9 Bom. 254. [Dec. 2, 1884.]

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521. An award remitted under section 520 becomes void on the removal of the grounds for setting aside the award. But no award shall be set aside except on one of the following grounds (namely)—

(a) corruption or misconduct of the arbitrator or umpire ;

(b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire ;

(c) the award having been made after the issue of an order by the Court superseding the arbitration and restoring the suit ;

and no award shall be valid unless made within the period allowed by the Court.

AN award of arbitration can only be set aside for corruption or partiality, but not on the ground of inconsistency.—*W. R. Sp. 153. [April 7, 1864.]*

AN award is not reversible except under this section. An arbitrator is not bound by technical rules of Court. He is appointed to give an equitable award, and can decide a case upon a document whether stamped or unstamped.—*Reedoy Kristo Muijoomdar v. Puddo Lochun Muzoomdar and others, 1 W. R. 12. [Aug. 11, 1864.]*

AN arbitration-award as to division of property left to minor sons, though assented to by their guardian, was set aside so far as regarded those sons on proof that the partition was injurious to them.—*Ramnarain Poramanick and others v. Sreemutty Dossee and another, 1 W. R. 280. [Dec. 7, 1864.]*

THE refusal of arbitrators to amend a clearly bad award is misconduct on their part, within the meaning of this section, justifying its being set aside.—*Deb Narain Singh and others v. Rajmonee Koonwur and others, 3 W. R. 168. [July 31, 1866.]* See also *Rum Bhunjun Bhuggut v. Shreekishen Bhuggut, 11 W. R. 140 [Feb. 18, 1869]*; *Lalla Ishuree Pershad and others v. Hur Rhunjua Tewaree and others (F. B.), 15 W. R. 9 [May 23, 1871]*; *Maharajah Joymungul Singh Bahadoor v. Mohun Ram Marwaree, 23 W. R. 429 (P. C.) [Mar. 11, 1875]*; *Protap Chunder Roodro v. Huro Moonee Dossia, 24 W. R. 188 [June 28, 1873].*

AN award of arbitration will not be invalidated by reason of one of the persons interested having become a lunatic after the proceedings before the arbitrator were substantially concluded, and before the final publication of the award.—*Goureenath and another v. Collector of Monghyr and another, 7 W. R. 5. [Jan. 3, 1867.]*

THE neglect of some of the arbitrators is misconduct within the meaning of this section.—*Sreenath Ghose v. Raj Chunder Paul and others, 8 W. R. 171. [July, 10, 1867.]* See also *Ram Guttee Mundul and others v. Thakoor Doss Mundul, 22 W. R. 418. [Aug. 6, 1874.]*

A JUDGEMENT passed within the time allowed by s. 324, Act VIII., 1859 (corresponding with s. 521, Act XIV., 1882), viz., 10 days after the submission of the award to the Court, is not a final judgment under s. 325 (corresponding with s. 522).—*Puresnath Dey and another v. Nobin Chunder Dutt, 12 W. R. 93. [June 28, 1869.]* See also *Gunga Narain Ghose and others v. Ram Chand Ghose and others, 20 W. R. 311. [July 29, 1873.]*

IF an arbitration-award is set aside, and the matter is tried as a suit, the arbitrator cannot be examined as a witness as to the grounds of his decision, but only to prove any admission which may have been made before him.—*Nil Monee Bose v. Mohima Chunder Dutt, 17 W. R. 516. [April 12, 1872.]*

NOTHING which passes between the parties to suit in any attempt at arbitration or compromise should be allowed to effect the slightest prejudice to the merits of their case, as it eventually comes to be tried before the Court.—*Mohabur Singhr and others v. Dhujjoo Singh, 20 W. R. 172. [June 14, 1873.]*

AN order of a Civil Court setting aside an arbitration-award, being an interlocutory order, is not open to an appeal immediately ; but when the Court sets aside the award on the ground of misconduct on the part of the arbitrator, and after hearing the case on its merits, makes its decree in favour of the plaintiff, it is competent to the defendant to appeal against that decree.—*Mothooranath Tewaree v. Brindaban Tewaree, 14 W. R. 327. [Aug. 6, 1874.]* See also *Ram Yad Singh and others v. Nirunjan Koor and others, 22 W. R. 420. [Sep. 16, 1870.]*

A CASE was referred by consent to arbitration, and, after having been recalled into Court, was again referred. An award was made by the arbitrator, and filed in Court. The defendants then objected, on the ground that they had no notice after the second reference, and that they were not heard, and that the arbitrator had otherwise misconducted himself. These objections were disallowed by the Subordinate Judge, who gave a decree in the terms of the award. This decree was upheld by the Judge on appeal,

who, however, found that the arbitrator had been guilty of misconduct. *Held* that, if the decree of the first Court was not final under s. 325, Act VIII. of 1859, all that the lower Appellate Court could do was to remand the case to be dealt with on its merits; but inasmuch as there had been an award and a decree thereon, which was final within the terms of that section, the lower Appellate Court had no jurisdiction to hear the appeal, or to express any opinion on what had passed in the first Court.—*Wazir Mahton v. Lulit Singh*, I. L. R., 7 Cal. 166. [Mar. 12, 1881.]

An award was remitted under s. 520 of Act X. of 1877. The arbitrators refused to reconsider it, and the Court thereupon proceeded with the suit, and gave the plaintiffs a decree. The defendants appealed from such decree on the ground, amongst others, that the award had been improperly remitted under s. 520. *Held* that the question whether the award had been properly remitted under s. 520 or not could be entertained in such appeals. The worshippers at a public mosque can maintain a suit to restrain the superintendent of such mosque from using it or its appurtenant rooms for purposes other than those for which they were intended to be used, and from doing acts which are likely to obstruct worshippers in entering or leaving such mosque.—*Abdul Rahman v. Yar Muhammad*, I. L. R., 3 All. 636. [Mar. 14, 1881.]

An order under s. 251 of the Civil Procedure Code, setting aside an award, made on a reference to arbitration in the course of a suit, under Chap. 37 of the Code, on the ground of the arbitrator's misconduct, is not subject to revision by the High Court in the exercise of the powers conferred on it by s. 622 of the Code.—*Chattar Singh v. Lekhraj Singh*, I. L. R., 5 All. 293. [Feb. 1, 1883.]

WHEREAN application was made to Subordinate Judge to file an award, and an objection was taken that the arbitrators had made their award several months before the date of the one sought to be filed, thus impeaching the identity of the award, and the Subordinate Judge, after an inquiry with regard to the several objections, ordered the award to be filed, *held* that the order of the Subordinate Judge should be set aside, or the award be deemed not to have been filed. The only objections which the Court can inquire into under ss. 525 and 526 of the Civil Procedure Code (Act XIV. of 1882) are those which are specified in ss. 520 and 521, and these relate to cases in which the reference and the award are accepted facts; but where the objection denies the *factum* of the particular award sought to be filed, and the objection does not seem to be frivolous, but one giving rise to inquiry into difficult questions of law and fact, it is not competent for the Court to deal with that objection under ss. 525 and 526. In such a case the Court should leave the applicant to a regular suit on the award as the basis of his cause of action wherein the party urging the objection will have the advantage of being defendant rather than a plaintiff, and of having an appeal open to him in the event of an unfavourable decision.—*Samal Nathu v. Jaishankar Dalsukram*, I. L. R., 9 Bom. 254. [Dec. 2, 1881.]

ALL matters in dispute in a suit were referred to arbitration. An award was duly made and filed, and a decree passed in accordance with the terms thereof. Subsequently, on the application of the plaintiff in the suit, the Court passed an order setting aside the decree and the award, and ordering the case to be set down for hearing upon the ground that the proceedings in connection with the arbitration had been taken, and the award had been filed, without notice to the plaintiff, and that, although the award was alleged to have been made with the consent of the parties, the plaintiff had not consented to it. *Held* that no appeal lay from such order. *Howard v. Wilson* (I. L. R., 4 Cal. 231) dissented from; *Mathooranath Tewaree v. Brindaban Tewaree* (14 W. R. 327) followed.—*Ambica Dasia v. Nadyar Chaudhary*, I. L. R., 11 Cal. 172. [Feb. 3, 1885.]

AN award upon a question referred to arbitrators, on whose part no misconduct or mistake appears, concludes the parties who have submitted to the reference from afterwards contesting in a suit the question so referred and disposed of by the award. Two widows of a deceased Hindu referred generally to arbitrators the question of their rights, respectively, in the estate of their deceased husband, including the matter whether there was, or was not, any cause disentitling the widow, who afterwards brought this suit for her share in the estate against the other who had obtained possession of the whole. The arbitrators declared her to be disentitled to succeed to any portion of the estate, and awarded her maintenance only. *Held*, that, in the absence of mistake or misconduct on the part of the arbitrators, the award was binding on the parties.—*Rani, Bhugoti v. Rani Chandan*, I. L. R., 11 Cal. 386. [Feb. 7, 1885.]

ON the 19th June 1884, an application for an order of reference was made, under s. 506 of the Civil Procedure Code (Act XIV. of 1882), by both parties to a suit. It was signed by both defendants and by the plaintiff's pleader. As the plaintiff's pleader had not been "specially authorized in writing" to join in the application, the Court postponed making

any order of the application till the 23rd idem. On that day the first defendant did not attend the Court, but the plaintiff's pleader produced the requisite authority, and the Court made an order referring the suit to the decision of the arbitrator nominated in the application of the 19th. On the 27th June, the first defendant made an application to the Court to revoke the authority of the arbitrator, and appoint a new arbitrator in his place, on the ground that, after signing the application of the 19th, he had become aware of certain circumstances connected with the arbitrator which showed that he was not worthy of the confidence reposed in him. No final order was made upon this application till after the submission of the award, when it was rejected, on the ground that the charges of misconduct and partiality imputed to the arbitrator were not made out. *Held*, first, that the first defendant not having objected to the appointment of the arbitrator on or before the 23rd June 1884, when the order of reference was made, must be taken to have tacitly acquiesced in the course adopted by the Court, and that such acquiescence amounted to a fresh submission. The objections raised by the first defendant could only be considered after the submission of the award, and then only to the extent permitted by s. 521 of the Code of Civil Procedure (Act XIV. of 1882). When once a matter is referred to arbitration, it is not competent to the Court, under the second paragraph of s. 508 of the Code of Civil Procedure (Act XIV. of 1882), to "deal with the matter in difference between the parties, except as provided in Chapter XXXVII. of the Code. There is no section of that chapter which authorizes the Court to revoke the authority conferred on an arbitrator, and to appoint a new one, except in cases falling strictly within the purview of s. 510 of the Code, where "the scope and object of the reference cannot be executed." It is only in those cases, apparently, that the authority conferred on arbitrators can be revoked "for good cause," the cause being such as is contemplated in that section, as where "an arbitrator refuses, or neglects, or becomes incapable to act, or leaves British India under circumstances showing that he will probably not return to India at an early date." The enactment of the second paragraph of s. 508 of the Code of 1882, which does not occur in the corresponding section (315) of Act VIII. of 1859, has the effect of rigidly restricting the Courts to the exact procedure laid down when dealing with cases in which the appointment of a new arbitrator becomes necessary.—*Halimbhai Karimbhai v. Shankar Sai*, I. L. R., 10 Bom. 381. [Dec. 12, 1885.]

AN order of reference to arbitration was made on 21st January. Six weeks' time was allowed for the return of the award. No application was made for extension of time. The award having been returned on 8th May, the Court refused to give judgment in accordance with it under s. 522 of the Code of Civil Procedure on the ground that it was not valid. The plaintiffs now petitioned the High Court under s. 622 of the Code of Civil Procedure. *Held* that the award was invalid, and the Court had not failed to exercise jurisdiction within the meaning of s. 622 of the Code of Civil Procedure.—*Simson v. Venkatagopalām*, I. L. R., 9 Mad. 475. [April 12, 1886.]

UNDER s. 521 of the Civil Procedure Code, the rule that no award shall be valid unless "made" within the period fixed by the Court, is equivalent to a rule that the award must be "delivered" within that period. Upon a reference to the arbitration of three persons, the Court ordered that the award made by them should be filed on the 19th September 1885. The award was not filed on that date, but was signed by two of the arbitrators on that date, and by the third arbitrator on the 20th September, on which day it was filed. It had been agreed that the opinion of the majority should carry the decision. *Held* that the award was not "made within the period fixed by the Court" within the meaning of s. 521 of the Civil Procedure Code.—*Behari Das v. Kalian Das*, F. L. R., 8 All. 543. [July 8, 1886.]

THE law contained in ss. 508 and 514 of the Civil Procedure Code requires that there shall be an express order of the Court fixing the time for delivery of the award, or for extending or enlarging such time; and the mere fact that the Court has passed a decree in accordance with the award cannot be taken as affording a presumption that an extension of time was given. An award which is invalid under s. 521 of the Civil Procedure Code, because not made within the period allowed by the Court, is not an award upon which the Court can make a decree, and a decree passed in accordance with such an award is not a decree in accordance with an award from which no appeal lies with reference to the ruling of the Full Bench in *Lachman Das v. Brijpal* (I. L. R., 6 All. 174). Where objection to the validity of the award on the ground that it was made beyond the time allowed was not taken by the defendant in the first Court, *held* that he was not thereby estopped from raising the objection for the first time in appeal, inasmuch as it was not shown that in the first Court he was aware of the defect, or had done anything to imply consent to extension of the time.—*Chuha Mal v. Hari Ram*, I. L. R., 8 All. 548. [July 9, 1886.]

THE word "misconduct" as used in s. 521 (cl. a) of the Civil Procedure Code should be interpreted in the sense in which it is used in English law with reference to arbitration-proceedings. It does not necessarily imply moral turpitude, but it includes neglect of the duties and responsibilities of the arbitrators, and of what Courts of justice expect from them before allowing finality to their awards. An arbitrator to whom the matters in difference in a suit were referred under s. 508 of the Civil Procedure Code, and who was directed by the order of reference to deliver his award by the 22nd September, applied on the 17th September for an extension of time, on the ground that a very full investigation was necessary, which it was not possible to make within the prescribed period. On the 20th September, without waiting for the order of the Court, he notified to the parties that he proposed to hold an inquiry in the case on the 24th, and it appeared that he did not expect this intimation to reach them before the 21st or 22nd. On the 23rd, he informed the plaintiff's pleader that a new date would be fixed for the inquiry, of which notice would be given to the parties. Notwithstanding this, on the 23rd, the arbitrator took evidence for the defendant in the absence of the plaintiff and his pleader. All these proceedings were held before the arbitrator received an order of the Court extending the time for delivery of the award up to the 26th October. On the 27th September he directed the parties to be informed that the investigation would be held on the 5th October. On the 4th October the plaintiff presented a petition praying the arbitrator to summon witnesses and to take documentary evidence, and upon this nothing definite was settled at the time; but, after the pleaders had left, the arbitrator passed an order rejecting the petition, on the ground that the evidence sought to be produced was unnecessary. On the same date, and on the 5th and 6th October, he took evidence for the defence in the absence of the plaintiff and his pleader. On the 10th he rejected a petition by the plaintiff praying for further time to produce evidence, and complaining of his having taken evidence in the plaintiff's absence, and having received in evidence a fabricated document. On the 25th October, the arbitrator delivered his award in favour of the defendant. Subsequently, upon objections made by the plaintiff, the Court set aside the award, and directed that the trial of the suit should proceed. Held that although no case of "corruption" within the meaning of s. 521 (cl. a) of the Civil Procedure Code had been made out against the arbitrator, the circumstances above stated amounted to "misconduct," and the award was therefore bad in law, and had rightly been set aside. *Soobul Thakur Opauletia v. Punchunund Tikha* (S. D. A., L. P., 1848, p. 115), *Reedoy Kristo Mujoomdar v. Pudda Lochun Mujoomdar* (1 W. R. 12), *Sada Ram v. Beharee* (S. D. A., N. W. P., 1864, vol. 2, p. 399), *Parus Dass v. Khoobee* (S. D. A. N. W. P., 1861, vol. 2, p. 199), *Howard v. Wilson* (1 L. R., 4 Cal. 231), *Bhagiruth v. Ram Ghulam* (1 L. R., 4 All. 283), *Wazir Mahton v. Lulit Singh* (1 L. R., 7 Cal. 166), *Nainsukh Rai v. Umadaï* (1 L. R., 7 All. 273), and *Pestonjee Nursurwanjee v. Manockjee* (12 Moo. I. A. 112), distinguished.—*Ganga Sahai v. Lekhras Singh*, 1 L. R., 9 All. 253. [Aug. 2, 1886.]

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522. If the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and if no application has been made to set aside the award, or if the Court has refused such application, the Court shall, after the time for making such application has expired, proceed to give judgment according to the award, or, if the award has been submitted to it in the form of a special case, according to its own opinion on such case.

Upon the judgment so given a decree shall follow, and shall be enforced in manner provided in this Code for the execution of decrees. No appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

S. 325, Act VIII., 1859 (corresponding with ss. 522, 588, Act XIV., 1882), is not applicable to private awards, and ought to be enforced under s. 327 (corresponding with ss. 525, 526, Act XIV., 1882); and an appeal will lie from the order of a Court directing its enforcement.—*Anund Chunder Singh v. Gopal Chunder Dan*, 8 W. R. 154. [July 21, 1865.] See *Khoda Buksh v. Mowla Buksh*, 14 W. R. 256 [Aug. 26, 1870]; *Lalla Inshuree Perabad and others v. Hur Bhunjun Tawaree and others*, 15 W. R., F. B., 9 [May 28, 1871]; *Raj Chunder Roy Chowdhry and others v. Brojendra Coommar Roy Chowdhry and others*, 21 W. R. 182 [Dec. 17, 1873].

A JUDGMENT given on an arbitration is final under this section when it is according to the award, but not otherwise; an appeal will lie on the ground that it is contrary to

the award.—*Deb Narain Singh and others v. Rajmonee Koonwur and others*, 3 W. R. 168. [July 31, 1865.] See also *Rum Bhunjun Bhuggut v. Sreekishen Bhuggut*, 11 W. R. 140 [Feb. 18, 1869]; *Lalla Ishuree Pershad and others v. Hur Bhunjun Tewaree and others*, 15 W. R. F. B. 9 [May 23, 1871]; *Maharajah Joymungul Singh Bahadoor v. Mohun Ram Marwaree*, 23 W. R. 429 (P. C.) [Mar. 11, 1875]; *Protap Chunder Boodro v. Huro Monee Dossia*, 24 W. R. 188 [June 28, 1875].

IN appealing to set aside an award as not binding upon the appellant, he is not bound to appeal against every interlocutory order.—*Sheonath alias Burray Kaka v. Ramnath alias Chotay Kaka*, 5 W. R. 21 (P. C.). [Dec. 22, 1865.] (P. C. R. 616.)

A PLAINTIFF's allegation in a former suit having been overruled in arbitration, he is not estopped from bringing a fresh suit on the finding of the arbitrators.—*Ram Chunder Dey v. Kishen Mohun Shaha*, 6 W. R. 68. [July 3, 1866.]

A JUDGMENT of a Court, given in accordance with an award of arbitration, is final under s. 325, Act VIII., 1859 (corresponding with ss. 522, 588, Act XIV., 1882), even if there has been corruption and misconduct on the part of the arbitrators.—*Ramonogra Chobey v. Mussamat Putmoorta Chobayan*, 7 W. R. 205 [Feb. 27, 1867]; *Sreenath Ghose v. Raj Chunder Paul and others*, 8 W. R. 171 [July 10, 1867].

SUBMISSION to arbitration is revocable before award made.—*Baboo Surubjeet Narain Singh v. Baboo Goursee Pershad Narain Singh and another*, 7 W. R. 269. [Mar. 14, 1867]. Not arbitrarily, but for good cause; the fact of one of the parties to the agreement revoking his submission is not a sufficient cause within the meaning of s. 326, Act VIII., 1859 (corresponding with ss. 523, 524, Act XIV., 1882).—*Pestonjee Nusserwanjee v. D. Manockjee and Co.*, 10 W. R. 51 (P. C.) [July 17, 1868]; *Mussamat Ablakhee Koorer and another v. Oodun Singh and others*, 15 W. R. 331 [Mar. 29, 1871]; *Ram Coomar Shaha v. Kala Chand Shaha and others*, 21 W. R. 395 [Mar. 25, 1874]; *Kadha Mohun Roy and others v. Raj Chunder Shah and another*, 22 W. R. 522 [Sep. 10, 1874].

WHERE the order of the Court which made the reference to arbitration declining to pass judgment according to the award is reversed in appeal, the lower Appellate Court's order is open to special appeal, the above section applying only to the Court by which a case is referred to arbitration.—*Puresnath Dey and another v. Nobin Chunder Dutt*, 12 W. R. 93. [June 23, 1869.] See *Bykunt Nath Mookerjee v. Prionath Chose*, 22 W. R. 447. [Aug. 18, 1874.]

ALTHOUGH no appeal will lie under this section against a judgment passed according to the award as prescribed in s. 327 (corresponding with s. 525), an appeal will lie, under s. 11, Act XXIII. of 1861, against an order made in execution-proceedings taken upon that judgment.—*Himutoollah Chowdhary v. Bisee Hurun*, 13 W. R. 62. [Jan. 4, 1870.]

WHERE a suit has been referred to arbitration by an order of Court, and the Court afterwards gives judgment according to the award made upon such reference, such judgment is final, and no appeal lies therefrom.—1 Hay. 566 (Marshall 163); *Shaikh Elahee Buksh and others v. Shaikh Hajoo and another*, 14 W. R. 33 [June 7, 1870]; *Gour Chunder Bhattacharjee v. Sodoy Chunder Nundee and others*, 17 W. R. 30 [Dec. 1, 1871]; *Maharajah Joymungul Singh Bahadoor v. Mohun Ram Marwaree*, (P. C.) 23 W. R. 429 [Mar. 11, 1875]. See *Lalla Ishuree Pershad and others v. Her Bhunjun Tewaree and others*, 15 W. R. F. B. 9. [May 23, 1871.]

THE addition, in a judgment according to an award, of a trifling direction upon a matter not referred to the arbitrators, which was quite separable from the other parts of the award, and did not affect the decision on the matter referred, was held not to affect the finality of the judgment.—*Hiro Soonduree Debee and others v. Sreedhur Bhattacharjee and others*, 17 W. R. 352. [Feb. 21, 1872.]

A DECREE was held to be in accordance with the award, and therefore final under this section, although it did not embody a suggestion of two out of three arbitrators, which suggestion the first Court dealt with as mere surplusage.—*Surboree Kant Bhattacharjee v. Anadya Kant Bhattacharjee*, 20 W. R. 226. [June 24, 1873.]

As long as the order of a Munsif quashing an arbitration-award subsists in full form, the award cannot be said to exist as a binding award between the parties.—*Fitzpatrick (D.) v. Maonaghten (E.)*, 21 W. R. 261. [Feb. 11, 1874.]

THE term "judicial proceeding," as used in Act X. of 1877, s. 2, must be understood to mean a judicial proceeding of the same nature as a suit, or such proceedings as are referred to in ss. 333, 522, 526, and 531. The definition given in Act X. of 1872 is not applicable.—*Dalpatbhai Bhagubhai v. Amarsang Yhemai Bhai*, I. L. R., 2 Bom. 553. [Mar. 20, 1878.]

THE sharers of a joint undivided estate agreed in writing that such estate should be partitioned and the accounts thereof settled by arbitration, and named one of such sharers as arbitrator, and agreed that he should settle all the accounts, show the surplus at each sharer's credit, and prepare lots, after partition of the lands and houses comprehended in such estate, and have them drawn within one year from the completion of the partition. Subsequently one of such sharers applied, under s. 522 of Act X. of 1877, to have such agreement filed in Court. The other sharers not objecting to this course, such agreement was filed accordingly, and the case was referred to such arbitrator. The arbitrator made an award, whereby he partitioned such estate into lots, assigning some only of such lots by name, and wherein he stated that he had not been able to settle the accounts owing to the default of the parties, and that, considering that the partition should take effect without any delay, he did not ask for further time. He further stated that "all the parties state that they will adjust the accounts after renewing the agreement," and he requested that the unassigned lots might be drawn in Court. The Court made an order confirming the award, and, it being objected that the settlement of the accounts should not be postponed, but that they should be settled as agreed, directed that the arbitrator should settle the accounts, and gave him a year's time for that purpose, and, some of the parties not being willing to draw the unassigned lots, directed the distribution of such lots "in reference to the age and number" of the sharers. Held that such order was a "decree" within the meaning of ss. 2 and 522 of Act X. of 1877: that the arbitrator should himself have drawn such lots, or he should have made the parties draw them; but, inasmuch as it would not have strained the agreement to have such lots drawn in Court, and no objection had been taken to the arbitrator not having himself drawn them, it was not incumbent on the Court to have remitted the award in order that the arbitrator might have drawn them; that the Court, however, should not have distributed such lots in the manner it had done, but should have drawn a lot for each person, and in acting as it had done it had acted contrary to the award, and for that reason its decree could not be maintained: and that, in confirming the award before the account had been settled and an award made in respect thereof, the Court had acted erroneously, inasmuch as the award had left undetermined a very important matter, *viz.* the settlement of the accounts, and the Court should, under s. 520 of Act X. of 1877, have remitted the award for the reconsideration of the arbitrator, and, as it had power to remit it upon such terms as it thought fit, the Court could have allowed one year, if necessary, for the settlement of the accounts; and on this account, and also because the Court had made an order postponing the settlement of the accounts, and thereby made an order contrary to and in excess of the award, its decree must be reversed.—*Sadik Ali Khan v. Imdad Ali Khan*, I. L. R., 3 All. 286. [Nov. 16, 1880.]

THE power to file an award includes the power to inquire if there was a submission to arbitration, and this question is concluded by the decree, which is final under ss. 526 and 522 of the Code of Civil Procedure.—*Michuraya Gúruvu v. Sadasiva Parama Gúruvu*, I. L. R., 4 Mad. 319. [Dec. 5, 1881.]

S. 522 of the Code of Civil Procedure, 1877, which provides that no appeal shall lie from a decree upon an award, except in so far as the decree is in excess of, or not in accordance with, the award, assumes that the award has been regularly and properly passed by arbitrators duly appointed. Where two of five arbitrators nominated by the parties to a suit, and appointed by the Court, had not consented before, and, after appointment, declined to act, and the Court appointed two arbitrators in their place against the consent of one of the parties to the suit, held that, under the circumstances, the appointment of the new arbitrators was not warranted by the provisions of s. 510 of the Code of Civil Procedure, and the order of reference to such arbitrators, the award made by them, and decree passed upon the award, were illegal. Held also that the High Court could set aside the decree under the power given by s. 622 of the Code of Civil Procedure.—*Pugardin v. Moidid*, I. L. R., 6 Mad. 414. [April 13, 1882.]

A CASE was referred to the arbitration of five persons, with a proviso that, in the event of any two of the arbitrators being absent, the arbitration should be continued by the other three. Two of the arbitrators named were the pleaders on either side, and these two, with the consent of the parties, ceased to act as arbitrators, but argued the matter before the other arbitrators. Held that the award made by the other three arbitrators named was a valid award.—*Dobendra Nath Shaw v. Audhoy Churn Bagchi*, I. L. R., 9 Cal. 905. [May 14, 1883.]

HELD that an appeal lies from a decree passed in accordance with an award when such decree is impugned on the ground that there is no award in law or in fact, upon which judgment and decree could follow under s. 522, Civil Procedure Code. *Joymungul*

Singh Bahadur v. Mohun Ram Murwhee (3 Suth. P. C. C. 145 ; S. C., 23 W. R. 429), and Bhagirath v. Ram Ghulam (I. L. R., 4 All. 283) observed on.—Lachman Dás v. Brijpal, I. L. R., 6 All. 174. [Jan. 22, 1884.]

THE question whether, under s. 522 of the Code of Civil Procedure, an appeal will lie against a decree given in accordance with an award, depends upon whether the award upon which the decree is based is a valid and legal award. A plaintiff and some of the defendants to a suit applied to refer the suit to arbitration (certain other of the defendants not having joined in the application) ; an award was passed, and a decree made in accordance with such award. The plaintiffs objected to the validity of the award on the ground that all the parties to the suit had not joined in referring the suit to arbitration ; the object of the suit was dismissed, and judgment given in accordance with the award. Held that an appeal would lie from a decree dismissing the objection and confirming the award ; but that, under the special circumstances of the case, justice was so clearly in favour of the view that the award was good, that the Court, although not entirely approving of certain decisions of the High Court (Shinath Biswas v. Kishen Mohun Mookerjee (5 W. R., 130), Ram Soonder Mookerjee v. Ram Shurun Mookerjee (6 W. R. 25), Doorga Churn Thakoor v. Kally Doss Hazrah (10 W. R. 463), Bishoka Dasia v. Annuto Lall Pain (4 C. L. R. 65), which laid down that such an award is good, notwithstanding that some of the parties to the suit may not have joined in the reference to arbitration, did not think fit to differ from those decisions on that occasion.—Joy Prokish Lall v. Sheo Golam Singh, I. L. R., 11 Cal. 37. [Sep. 12, 1884.]

THE arbitrators to whom the matters in difference in two suits for money were referred to arbitration made an award for payment to the plaintiff of certain sums by the defendant, and further directed that these sums should be paid by certain instalments. The plaintiff preferred objections to the award, in so far as it directed payment by instalments ; and the Court, holding that the arbitrators had no power to make such a direction, modified the award to that extent, under s. 518 of the Civil Procedure Code. On appeal, the District Judge, while allowing the power of the arbitrators to direct payment by instalments, reduced the number of instalments which had been fixed. Held that the decree of the first Court not being in accordance with the award, an appeal lay to the Judge, with reference to s. 522 of the Code. Held also that as it was clear that the reference to arbitration gave the arbitrators full powers, not only as to the amount to be paid, but also as to the manner of payment, the lower Appellate Court was wrong in reducing the number of instalments which had been fixed. Per Mahmood, J.—The word "award" used in the last sentence of s. 522 of the Code must be understood to mean an award as given by the arbitrators, and not as amended by the Court under s. 518. The words "in excess of, or not in accordance with, the award," used in s. 522, were intended to enable the Court of appeal to check the improper use of the power conferred by s. 518.—Jawahar Singh v. Mul Raj, I. L. R., 8 All. 449. [May 5, 1886.]

523. When any persons agree in writing that any difference between

Agreement to refer to arbitration may be filed in Court. them shall be referred to the arbitration of any person named in the agreement or to be appointed by any Court having jurisdiction in the matter to which the agreement relates, the parties thereto, or any of them, may apply that the agreement be filed in Court.

Extending to Provincial & C. Courts.

The application shall be in writing, and shall be numbered and registered.

Application to be numbered and registered. ed as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application have been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

On such application being made, the Court shall direct notice thereof to

Notice to show cause against filing. be given to all the parties to the agreement other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

If no sufficient cause be shown, the Court may cause the agreement to be filed, and shall make an order of reference thereon, and may also nominate the arbitrator, when he is not named therein, and the parties cannot agree as to the nomination.

UNDER Act X. of 1877, ss. 523 and 525, parties to a suit, as well as persons not engaged in litigation, may agree to refer matters in dispute between them to private arbitration without the intervention of the Court, and may apply to have the agreement filed; and the mere fact that the suit is pending with respect to the matters in dispute is not of itself a sufficient reason to induce the Court to refuse to file the agreement.—*Harivalabdas Kallianadas v. Utamchand Maneckchand*, I. L. R., 4 Bom. 14 [Feb. 13, 1879.] See also *Khemna Gowala v. Buddoo Khan*, I. L. R., 6 Cal. 251. [July 8, 1880.]

THE sharers of a joint undivided estate agreed in writing that such estate should be partitioned and the accounts thereof settled by arbitration, and named one of such sharers as arbitrator, and agreed that he should settle all the accounts, show the surplus at each sharer's credit, and prepare lots, alter partition of the lands and houses comprehended in such estate, and have them drawn within one year from the completion of the partition. Subsequently one of such sharers applied, under s. 523 of Act X. of 1877, to have such agreement filed in Court. The other sharers not objecting to this course, such agreement was filed accordingly, and the case was referred to such arbitrator. The arbitrator made an award, whereby he partitioned such estate into lots, assigning some only of such lots by name, and wherein he stated that he had not been able to settle the accounts owing to the default of the parties, and that, considering that the partition should take effect without any delay, he did not ask for further time. He farther stated that "all the parties state that they will adjust the accounts after renewing the agreement," and he requested that the unassigned lots might be drawn in Court. The Court made an order confirming the award, and, it being objected that the settlement of the accounts should not be postponed, but that they should be settled as agreed, directed that the arbitrator should settle the accounts, and gave him a year's time for that purpose, and, some of the parties not being willing to draw the unassigned lots, directed the distribution of such lots "in reference to the age and number" of the sharers. *Held* that such order was a "decree" within the meaning of ss. 2 and 522 of Act X. of 1877: that the arbitrator should himself have drawn such lots, or he should have made the parties draw them; but, inasmuch as it would not have strained the agreement to have such lots drawn in Court, and no objection had been taken to the arbitrator not having himself drawn them, it was not incumbent on the Court to have remitted the award in order that the arbitrator might have drawn them: that the Court, however, should not have distributed such lots in the manner it had done, but should have drawn a lot for each person, and in acting as it had done it had acted contrary to the award, and for that reason its decree could not be maintained: and that, in confirming the award before the accounts had been settled and an award made in respect thereof, the Court had acted erroneously, inasmuch as the award had left undetermined a very important matter, viz., the settlement of the accounts, and the Court should, under s. 520 of Act X. of 1877, have remitted the award for the reconsideration of the arbitrator, and, as it had power to remit it upon such terms as it thought fit, the Court could have allowed one year, if necessary, for the settlement of the accounts; and on this account, and also because the Court had made an order postponing the settlement of the accounts, and thereby made an order contrary to and in excess of the award, its decree must be reversed.—*Sadik Ali Khan v. Imdad Ali Khan*, I. L. R., 3 All. 286. [Nov. 16, 1880.]

IN an agreement to submit to arbitration, which was filed in Court under the provisions of s. 523 of the Code of Civil Procedure, it was stipulated that the decision of the arbitrator should be accepted as final, and that no appeal therefrom should be made by either party. *Held* that this stipulation did not prevent the Court from setting aside the award on the ground of misconduct on the part of the arbitrator.—*Burla Ranga v. Kalapalli Reddi Sithaya*, I. L. R., 6 Mad. 368. [Feb. 13, 1883.]

HELD by the Full Bench (Oldfield, J., dissenting).—That an order refusing to file in Court an agreement to refer to arbitration is not appealable. *Per* Oldfield, J.—That such an order is appealable, and the court-fee payable on the memorandum of appeal is an *ad-valorem* fee computed on the value of the subject-matter in dispute in the appeal. *Janki Tewari v. Gayan Tewari* (I. L. R., 3 All. 427) distinguished by Stuart, C.J., and followed by Oldfield, J.—*Daya Nand v. Bakhtawar Singh*, I. L. R., 5 All. 333. [Feb. 16, 1883.]

IN an agreement to refer certain matters to arbitration, which was filed in Court under s. 523 of the Civil Procedure Code, and on which an order of reference was made by the Court, no provision was made for difference of opinion between the arbitrators, by appointing an umpire or otherwise. The arbitrators being unable to agree upon the matters referred, the Court, on the application of one of them, appointed an umpire, and directed that the award should be submitted on a particular date. An award was made by the umpire and one arbitrator without the concurrence of the other arbitrator, and

submitted to the Court, which passed a decree in accordance with its terms. On appeal by the defendant in the case, the District Judge reversed the decree. *Held* that an appeal would lie to the Judge from the decree of the first Court, where there had been no legal award such as the law contemplated. *Lachman Das v. Brijpal* (I. L. R., 6 All. 174) referred to. *Held* that in the present case there had been no legal award such as the law contemplated, inasmuch as the agreement to refer gave the Court no power to appoint an umpire, and required that the award should be made by the arbitrators named by the parties. *Held* that s. 509 and the other sections preceding s. 523 of the Civil Procedure Code, relating to the power of the Court to provide for difference of opinion among the arbitrators, were only made applicable to cases coming under s. 523, so far as their provisions were consistent with the agreement filed under that section. *Held* also that the defendant was not precluded from appealing to the Judge from the first Court's decree because he had not applied to set aside the award within the ten days allowed by art. 15, sch. ii. of the Limitation Act, inasmuch as that article applied to applications referred to in s. 522 of the Civil Procedure Code, i. e., applications to set aside an award on any of the grounds mentioned in s. 521, and the defendant did not contest the award on any of those grounds.—*Muhammad Abid v. Muhammad Asghar*, I. L. R., 8 All. 64. Dec. 14, 1885.]

524. The foregoing provisions of this chapter, so far as they are consistent with any agreement so filed, shall be applicable to all proceedings under an order of reference made by the Court under section 523, and to the award of arbitration and to the enforcement of the decree founded thereupon.

Extending to Provincial S. C. Courts.

Provisions of chapter applicable to proceedings under order of reference.

WHERE the partner of a firm in their partnership-deed agreed to refer their disputes to arbitration, and the reference made in pursuance of this agreement gave the arbitrators a power to make partition, but omitted a power to sell, *held*, on the award being made a rule of Court, that the Court had no power, under s. 326, Act VIII. of 1859, to order the sale of certain property of which the arbitrators were unable to make partition, and the sale of which they recommended on that ground.—*Chumimoney Dossce and another v. Nistarinee Dossce*, 3 C. L. R. 357. [May 30, 1878.]

THE sharers of a joint undivided estate agreed in writing that such estate should be partitioned and the accounts thereof settled by arbitration, and named one of such sharers as arbitrator, and agreed that he should settle all the accounts, show the surplus at each sharer's credit, and prepare lots, after partition of the lands and houses comprehended in such estate, and have them drawn within one year from the completion of the partition. Subsequently one of such sharers applied, under s. 523 of Act X. of 1877, to have such agreement filed in Court. The other sharers not objecting to this course, such agreement was filed accordingly, and the case was referred to such arbitrator. The arbitrator made an award, whereby he partitioned such estate into lots, assigning some only of such lots by name, and wherein he stated that he had not been able to settle the accounts owing to the default of the parties, and that, considering that the partition should take effect without any delay, he did not ask for further time. He further stated that "all the parties state that they will adjust the accounts after renewing the agreement," and he requested that the unassigned lots might be drawn in Court. The Court made an order confirming the award, and, it being objected that the settlement of the accounts should not be postponed, but that they should be settled as agreed, directed that the arbitrator should settle the accounts, and gave him a year's time for that purpose, and, some of the parties not being willing to draw the unassigned lots, directed the distribution of such lots "in reference to the age and number" of the sharers. *Held* that such order was a "decree" within the meaning of ss. 2 and 522 of Act X. of 1877: that the arbitrator should himself have drawn such lots, or he should have made the parties draw them; but, inasmuch as it would not have strained the agreement to have such lots drawn in Court, and no objection had been taken to the arbitrator not having himself drawn them, it was not incumbent on the Court to have remitted the award in order that the arbitrator might have drawn them: that the Court, however, should not have distributed such lots in the manner it had done, but should have drawn a lot for each person, and in acting as it had done it had acted contrary to the award, and for that reason its decree could not be maintained: and that, in confirming the award before the accounts had been settled and an award made in respect thereof, the Court had acted erroneously, inasmuch as the award had left undetermined a very important matter, viz., the settlement of the accounts, and the Court should, under s. 520 of Act X. of 1877, have remitted the award for the reconsideration of the arbitrator, and, as it had power to remit it upon such terms as it thought fit,

the Court could have allowed one year, if necessary, for the settlement of the accounts; and on this account, and also because the Court had made an order postponing the settlements of the accounts, and thereby made an order contrary to and in excess of the award, its decree must be reversed.—*Sadik Ali Khan v. Indad Ali Khan*, L. R., 3 All. 286. Nov. 16, 1880.]

Extending to
Provincial S.
C. Courts.

525. When any matter has been referred to arbitration without the intervention of a Court of Justice, and an award has been made thereon, any person interested in the award may apply to the Court of the lowest grade having jurisdiction over the matter to which the award relates that the award be filed in Court.

The application shall be in writing, and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

THERE is no appeal from an order refusing to file an award under this section.—*Vaithalinga Pillai v. Rathvam Pillai*, 4 Ind. Jur. 392.

EXCEPT in the cases mentioned in the Act, there is no appeal from a decree which is passed in terms of an award.—*Manji Premji Shet v. Maliyakai Royapen Korja Kaji*, 4 Ind. Jur. 396.

A SUBMISSION to private arbitration need not be put in writing to be valid, and a private award made in pursuance thereof will be respected by the Courts if duly performed. Both submission and award may be proved without *ikrarnamah*.—W. R., Sp. 76. [Feb. 19, 1864.] See also *Mudhoo Manjse v. Rajah Nilmonsee Singh Deo*, 18 W. R. 533. [Dec. 9, 1872.]

THERE is nothing in Act VIII of 1859 to prevent parties, who have a suit pending in Court, to submit the subject-matter of that suit and other matters in dispute to arbitration under this section.—W. R. Sp., Mis., 21. [April 19, 1864.]

AWARD should be filed in Court. Effect of not filing as laid down in s. 327, Act VIII. 1859 (corresponding with ss. 525, 526, Act XIV. 1882).—*Soophil Sing and others v. Methoo Sing and others*, 1 W. R. 163. [Sep. 22, 1865.] See also *Lalla Mewa Lall v. Sree Mahato*, 25 W. R. 152. [Feb. 25, 1876.]

THE benefit of this section will be lost if the application for enforcement of an award of private arbitration be not made within 6 months.—*Bhyrub Jha v. Hunooman Dutt and others*, 5 W. R. 123. [Feb. 28, 1866.]

AN appeal, on the allegation of want of consent of parties, lies from the order of a lower Court under s. 327, Act VIII., 1859 (corresponding with s. 525, Act XIV., 1882), directing a private award of arbitration to be filed and enforced.—*Hulodhur Sungiree v. Gunesh Santhal and others*, 6 W. R. 60. [June 30, 1866.] See also *Lalla Ishuree Pershad and others v. Hur Bhunjun Tewarce and others*, 15 W. R. F. B. 9 [May 23, 1871]; *Protap Chunder Roodro v. Huro Monsee Dossia*, 24 W. R. 168 [July 28, 1875].

POSSESSION under a private award of arbitration would suffice to make the award valid, under cl. 3, s. 3, Reg. VI. of 1813, without the intervention of the Court.—*Mohesh Chunder Moiter and others v. Buloram Moiter and others*, 6 W. R. 91. [July 17, 1866.]

AN order rejecting an application to file an award under this section is not a decree, and is therefore not appealable.—*Baboo Chintaman Singh v. Roopa Kooer*, 6 W. R. Mis., 83 [Aug. 31, 1866]; *Digamburee Dossee v. Proornanund Dey and others*, 7 W. R. 401 [April 24, 1867]; *Raj Coomarr Singh v. Kalce Churn Singh and others*, 11 W. R. 57 [Jan. 23, 1869]; *Mudhoo Soodum Dars v. Odoito Churn Dars*, 12 W. R. 85 [June 26, 1869]. But see *Khoda Buksh v. Mowla Buksh*, 14 W. R. 255 [Aug. 23, 1870]; *Lalla Ishuree Pershad and others v. Hur Bhunjun Tewarce and others*, 15 W. R. F. B. 9 [May 23, 1871]; *Mussamut Syudoonissa v. Fida Hossein and others*, 12 W. R. 182; [July 16, 1869]. Even though the order award costs.—*Preonath Chowdhry v. handhan and others*, 11 W. R. 104. [Feb. 8, 1869.]

A PRIVATE award may be valid and binding, though no proceedings under s. 327, Act VIII., 1859 (corresponding with ss. 525, 526, Act XIV., 1882), have been taken to enforce it.—*Baboo Sufubjeet Narain Singh v. Baboo Gourree Pershad Narain Sing and another*, 7 W. R. 269. [Mar. 14, 1867.] See also *Rampad Sahoo v. Doolar Sahoo*, 9 W. R. 441 [April 3, 1868]; *Nursingh, Cariwan & Puttoo Ostagur*, 20 W. R. 420 [Sep. 6, 1873.]

A SMALL Cause Court has jurisdiction, under this section, to entertain an application to file a private arbitration-award relating to a debt not exceeding the amount cognizable by such Court if the defendant resides within its jurisdiction.—*Elam Puramanick v. Sefastullah Sheikh*, 10 W. R. 85. [June 27, 1868.] See *Mussamut Banoo v. Narain Sahoo*, 13 W. R. 233. [Feb. 25, 1870.]

AN application to enforce an arbitration-award under this section may be made without any valuation of the suit.—*Khoda Buksh v. Mowla Buksh*, 14 W. R. 255. [Aug. 28, 1870.]

THE above section incorporates the provision of s. 522 as to the finality of the judgment given according to the award, and puts the award filed under s. 525 in the same position as the award filed under s. 522. Where a Court files an arbitration-award, and passes a decree, that decree is final.—*Sreenath Chatterjee v. Kylash Chunder Chatterjee*, 21 W. R. 248. [Feb. 10, 1874.]

WHEN a private award between parties is filed in a Court under this section, the prescribed course is for the Court to give judgment and pass a decree, and not to order execution before such decree has been passed.—*Sahib Ram Jha v. Kashee Nath Jha and others*, 21 W. R. 295. [Feb. 25, 1874.]

ON an application under this section to have an award filed in Court, it was held that the word "award" as used in the plaint must be taken to include the whole document which is scheduled to the plaint, i.e., the formal judgment as well as the decree.—*Chowdhry Murtaza Hossein v. Mussamut Bibi Bechunnissa*, 26 W. R. 10 (P. C.). [July 13, 1876.]

IT was decided by the Full Bench in *Lala Ishuri Pershad v. Hur Bhunjun Tewarce* (15 W. R. F. B. 9) that the question of the existence of a legal award is one which is open to appeal, but that when the existence of the award has been finally determined, and judgment is given in accordance with the award, then there is no appeal.—*Bahur Meah v. Juman Meah*, 2 C. L. R. 362. [April 3, 1878.]

UNDER Act X. of 1877, ss. 523 and 525, parties to a suit, as well as persons not engaged in litigation, may agree to refer matters in dispute between them to private arbitration without the intervention of the Court, and may apply to have the agreement filed; and the mere fact that the suit is pending with respect to the matters in dispute is not of itself a sufficient reason to induce the Court to refuse to file the agreement.—*Harivaladas Kallianadas v. Utanchand Maneckchand*, 1. L. R., 4 Bom. 1. [Feb. 13, 1879.] See also *Khemna Gowala v. Budoloo Khan*, 1. L. R., 6 Cal. 251. [July 8, 1880.]

WHEREAS an arbitration-bond provides that the matters in dispute refer to the arbitrators may be taken up and dealt with *seriatim*, and the award delivered bit by bit (*khurd khurd*), it is not necessary under s. 327 of Act VIII. of 1859 (corresponding with ss. 525, 526, Act XIV., 1882) that all the matters referred to should have been decided before the first portion of the award dealing with some only of the subjects in dispute can be filed.—*Srimoti Shoshemukhi Dabir v. Nabin Chunder Roy*, 4 C. L. R. 92. [Feb. 17, 1879.]

A SUBORDINATE Judge, although invested with the jurisdiction of a Small Cause Court Judge, does not, on that account, become a Small Cause Court Judge, nor his Court such a Court within the meaning of Act X. of 1877. He therefore has power, within the limits of his ordinary pecuniary jurisdiction, to receive and file awards of arbitrators under s. 525 of that Act.—*Balkrishna v. Lakshman*, 1. L. R., 3 Bom. 219. [April 3, 1879.]

WHEN a Court has refused to file an award upon an application under s. 525, Civil Procedure Code, no appeal lies against such decision, which is an order, and not a decree; but the High Court can interfere under s. 622. An award made under s. 525, which is partly within and partly exceeds the terms of the submission to arbitration, cannot be enforced by summary procedure under s. 526, as to such portion as does not exceed those terms. To refer to arbitration questions arising on the construction of the award and questions left undecided by it is a matter beyond the scope of an agreement to submit to a scheme for the future management of a *devasam* as regards conduct of suits, granting of demises, custody of property, collection of rents, appointment and removal of servants, and defrayment of current expenditure.—*R. Ry. Mana Vikrama, Zamorin, Maharaja Bahadur of Calicut v. Mallichery Kristnan Nambudri*, 1. L. R., 3 Mad. 68. [July 26, 1880.]

Per SPANKIE, J.—An order refusing an application to file a private award in Court is appealable as a decree. *Jokhun Rai v. Bucho Rai* (N. W. P. H. C. R. 1868, p. 353) and *Hussaini Bibi v. Mohsin Khan* (I. L. R., 1 All. 156) impugned and distinguished: *Vishnu Bhaui Joshi v. Ravji Bhaui Joshi* (I. L. R., 3 Bom. 18) distinguished. *Per Stuart, C.J.*—An order refusing an application to file a private award in Court on grounds not mentioned in ss. 520 and 521 is a decree, and appealable as such.—*Janki Tewari v. Gayan Tewari and another*, I. L. R., 3 All. 427. [Jan. 11, 1881.]

By the judgment of the plaintiff, a case under s. 525 of Act X. of 1877 was taken out of the scope of chap. 37 of that Act. *Held* that this being so, the decree of the Court of first instance was appealable. *Held* also, where a private award determined a matter not referred to arbitration, that a claim under s. 525 of Act X. of 1877, that such award should be filed in Court, was properly dismissed.—*Juala Singh and another v. Narain Das*, I. L. R., 3 All. 541. [Mar. 4, 1881.]

MATTERS in dispute were referred to arbitration without the intervention of the Court. An award was made, and upon an application under s. 525 of the Civil Procedure Code to file the award, one of the parties showed cause why the award should not be filed, and the Subordinate Judge held the objection to be good. *Held* that no appeal lay.—*Sree Ram Chowdhry v. Denobundhoo Chowdhry*, I. L. R., 7 Cal. 490. [May 25, 1881.]

THE term "to show cause" in ss. 525 and 526 of the Code of Civil Procedure (Act X. of 1877) does not mean merely to allege cause, nor even to make out that there is room for argument, but both to allege cause and to prove it to the satisfaction of the Court. Matters in dispute between the parties were referred to seven arbitrators without the intervention of a Court. The arbitrators, or so many of them as could be got together, held sittings extending over some months, and at each sitting they came to a decision, either unanimously or by a majority, on different questions submitted to them. These decisions were entered on the minutes of their proceedings; and at their last sitting the arbitrators all agreed, and informed the parties, that the decisions so arrived at constituted the final award, and gave directions for embodying those decisions in the shape of a formal document, which was drawn up on a subsequent day, but was signed by four only out of the seven arbitrators. The remaining arbitrators not being asked to sign it, they never did sign it. *Held* that the actual award was an oral award made by all the arbitrators on the last day of their joint sittings, and the drawing up of the formal award was a purely ministerial act to give effect to the previously completed judicial act. The omission to take the signature of the minority of the arbitrators to the document, which formed the record of the award, was not fatal to the award. Amongst other matters the arbitrators were asked to make a division of certain fields to which the parties were equally entitled. The arbitrators decided the other matters, but as regards the fields said that it was inconvenient to do so in consequence of the rains, and ordered the parties "to receive the profits half and half, and to pay the assessment half and half." *Held* that the award left undetermined one of the principal subjects of dispute; and as the Court had no power to remit the award to the arbitrators, the applicant was entitled to a judgment setting aside the order for filing the award.—*Dandekars v. Dandekars*, I. L. R., 6 Bom. 663. [Aug. 14, 1882.]

WHERE an award was made and signed by the arbitrators on the 5th of August 1881, but was not delivered to the parties till the 13th September following, *semble* that an application to file the award, made on the 25th of February 1882, under the provisions of s. 525 of the Code of Civil Procedure, was not barred by limitation. It is clearly the intention of the Legislature that a party to an arbitration should have six months to enforce the award, under s. 525 of the Code of Civil Procedure, from the time when he is in a position to enforce it. Under ss. 525 and 526 of the Code of Civil Procedure, the Court has full power to enter into the question of the sufficiency of the cause shown against the filing in Court of an award. *Dandekars v. Dandekars* (I. L. R., 6 Bom. 663) followed; *Ichamoyee Chowdhranee v. Prosunno Nath Chowdhri* (I. L. R., 9 Cal. 557) dissented from. After an award has been made and handed to the parties, the functions of the arbitrators cease. They have no power afterwards to deal with an application for review of their decision.—In the Matter of the Petition of Datto Singh; *Datto Singh v. Dosad Bahadur Singh*, I. L. R., 9 Cal. 575. [Jan. 17, 1883.]

NO APPEAL lies from an order upon an application to file an award under s. 525 of the Civil Procedure Code. Upon an application to file an award under s. 525 of the Civil Procedure Code, the Court to which the application is made has no jurisdiction to enquire whether the defendant has agreed to the terms of the instrument referring the matter to arbitration, or whether the terms were obtained by fraud. When such objections are made, it is the duty of the Court to reject the application under s. 525, and refer the parties to a

regular suit. The proper court-fee upon an application to file an award under s. 525 is the court-fee prescribed for applications, and not the court-fee upon a plaint.—*Bijadur Bhagut v. Mogohur Bhagut*, I. L. R., 10 Cal. 11. [June 1, 1883.]

WHERE an application is made under s. 525 of the Code of Civil Procedure to have an award filed in Court, and it appears to the Court, on cause shown why the award should not be filed, that there is a reasonable dispute between the parties on any of the grounds mentioned in s. 520 or 521, the application should be dismissed. Under s. 525 of the Code of Civil Procedure, sufficient cause may be shown by affidavit or verified petition. *Sree Ram Chowdhry v. Denoonndhoo Chowdhry* (I. L. R., 7 Cal. 496), and *Sashti Charan Chatterjee v. Tarak Chandra Chatterjee* (8 B. L. R. 315) referred to.—*Ichamoyee Chowdhranee v. Prasunno Nath Chowdhry*, I. L. R., 9 Cal. 557. [July 31, 1883.]

WHEN an application is made to a Court to file an award under s. 525 of the Code of Civil Procedure, and an objection is made to the filing of it upon any of the grounds mentioned in s. 520 or 521, the proper course for the Court to pursue is to dismiss the application, and to leave the applicant to bring a regular suit to enforce the award, in which all the objections to its validity may be properly tried and determined. Where no such ground of objection is made to the filing of the award, and the Court consequently orders it to be filed, no appeal lies against that order.—*Hurronath Chowdhry v. Nistarini Chowdrani*, I. L. R., 10 Cal. 74. [June 23, 1883.]

WHERE a matter has been referred to arbitration, without the intervention of a Court of Justice, by parties one of whom is an agriculturist, and an award has been made thereon, any person interested in the award may, without obtaining the conciliator's certificate, apply for the filing of the award under s. 525 of the Code of Civil Procedure, the provisions of which are not superseded by s. 47 of the Dekkhan Agriculturists' Relief Act, 1879.—*Gangadhar Sakharām v. Mahādu Santāji*, I. L. R., 8 Bom. 20. [Sep. 27, 1883.]

HELD (Oldfield, J., dissenting) that an appeal does not lie from an order disallowing an application to file an award under s. 525 of the Civil Procedure Code. *Janki Tewari v. Gayan Tewari* (I. L. R., 3 All. 427) distinguished by Stuart, C.J. The same case followed by Oldfield, J.—*Bhola v. Gobind Dayal*, I. L. R., 6 All. 186. [Jan. 25, 1884.]

WHERE an application was made to a Subordinate Judge to file an award, and an objection was taken that the arbitrators had made their award several months before the date of the one sought to be filed, thus impeaching the identity of the award, and the Subordinate Judge, after an inquiry with regard to the several objections, ordered the award to be filed, held that the order of the Subordinate Judge should be set aside, or the award be deemed not to have been filed. The only objections which the Court can inquire into under ss. 525 and 526 of the Civil Procedure Code (Act XIV. of 1882) are those which are specified in ss. 520 and 521, and these relate to cases in which the reference and the award are accepted facts; but where the objection denies the *factum* of the particular award sought to be filed, and the objection does not seem to be frivolous, but one giving rise to inquiry into difficult questions of law and fact, it is not competent for the Court to deal with that objection under ss. 525 and 526. In such a case the Court should leave the applicant to a regular suit on the award as the basis of his cause of action wherein the party urging the objection will have the advantage of being defendant rather than a plaintiff, and of having an appeal open to him in the event of an unfavourable decision.—*Sāmal Nathu v. Jaishankar Dalsukram*, I. L. R., 9 Bom. 254. [Dec. 2, 1884.]

A DOCUMENT, although headed as an "award," and signed by the arbitrator, which merely recommends a solution of the questions referred to arbitration, will not be treated by the Court as an award on an application made under s. 525 of the Code of Civil Procedure.—*Nudololl Mookerjee v. Chunder Kant Mookerjee*, I. L. R., 11 Cal. 356. [Mar. 26, 1885.]

THE three parties to a deed of partnership agreed that in case of any dispute or difference, the matter should be referred to the arbitration of persons chosen by each party to such dispute, and that in case any such party should refuse or fail to nominate an arbitrator, then the arbitrator named by the other party should nominate another arbitrator, and the two should nominate a third person as umpire. Certain differences having arisen among the three partners, two of them called upon the executors of the third to nominate an arbitrator under the terms of the deed, but they refused to do so. The first-mentioned partners then nominated an arbitrator, who in his turn nominated another, and these, having appointed an umpire, made an award. One of the partners at whose instance the matter in dispute had been referred to arbitration presented an application under s. 525 of the Civil Procedure Code praying that the award might be filed in Court. This application was opposed by the executors of the third partner, who appeared and lodged

verified petitions disclosing grounds of objection, within the meaning of s. 521 of the Code. *Held* that the word "parties" as used in s. 525 should not be confined to persons who are actually before the arbitrators; that if persons by an agreement have undertaken between themselves that, in the event of a certain state of things happening, a particular procedure shall be followed which, under one state of circumstances, may be adopted *in arbitrum*, they should, for the purposes of s. 525, be regarded as parties to that arbitration; and that there was sufficient reason to show that the defendants in the present case were *prima facie* bound by the arbitration, so as to bring them within the terms of s. 525 as parties thereto, who should be called on to show cause why the award should not be filed. *Willcox v. Stock* (I. L. R., 1 C. P. 671) and *Re Newton and Hetherington* (19 C. B., N. S., 342) referred to. *Held* also that ss. 525 and 526 of the Code, read together, mean that the party coming forward to oppose the filing of the award must show cause, that is, must establish by argument, or proof, or both, reasonable grounds to warrant the Court in arriving at the conclusion that the award is open to any of the objections mentioned in s. 520 or s. 521, and it is not sufficient, when it is sought to make the award a rule of Court, for the defeated party to come and merely say upon a verified petition that this or that ground referred to in ss. 520 and 521 existed against the filing. *Sree Ram Chowdhry v. Denobundhoo Chowdhry* (I. L. R., 7 Cal. 490) and *Jehamoyee Chowdhrahee v. Prasunno Nath Chowdhry* (I. L. R., 9 Cal. 537) dissented from. *Dutto Singh v. Dosad Bahadur Singh* (I. L. R., 9 Cal. 575), *Dandekar v. Dandekar* (I. L. R., 6 Bom. 668), and *Chowdhry Murtaza Hossein v. Pichunnissa* (I. L. R., 3 Ind. Ap. 209), referred to.—*Jones v. Sedgard*, I. L. R., 8 All. 340. [May 9, 1886.]

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526. If no ground, such as is mentioned or referred to in section 520 or section 521, be shown against the award, the Court shall order it to be filed, and such award shall then take effect as an award made under the provisions of this chapter.

UNDER the law previous to Act VIII. of 1859, the summary refusal to enforce an arbitration-award did not bar the use of the award as the basis of a regular suit.—*W. R. Sp. 283* (I. R. 65). [June 18, 1864.]

A PLAINTIFF cannot sue for moveables by a suit to enforce an award. He may sue for damages and losses sustained with regard to his share of ancestral property under his general rights of inheritance, whether adjudicated upon by a previous award of arbitration or not; and as regards lands, he may sue either for enforcement of the award or upon his rights.—*Ram Coomarr Singh v. Dewan Ram Jeebun Singh and others*, 5 W. R. 165. [Mar. 19, 1866.]

WHEN sufficient cause is shown against a private award, the Court may refuse to enforce it under this section.—*Nader Ali and others v. Majoo*, 21 W. R. 377. [Mar. 23, 1874.]

THE term "judicial proceeding," as used in Act X. of 1877, s. 2, must be understood to mean a judicial proceeding of the same nature as a suit or such proceedings as are referred to in ss. 333, 522, 526, and 531. The definition given in Act X. of 1872 is not applicable.—*Dalpatbhai Bhagubhai v. Anarsang Khemá Bhai*, I. L. R., 2 Bom. 553. [Mar. 20, 1878.]

WHEN a Court has refused to file an award upon an application under s. 525, Civil Procedure Code, no appeal lies against such decision, which is an order, and not a decree; but the High Court can interfere under s. 622. An award made under s. 255, which is partly within and partly excluded by the terms of the submission to arbitration, cannot be enforced by summary procedure under s. 526 as to such portion as does not exceed those terms. To refer to arbitration questions arising on the construction of the award and questions left undecided by it is a matter beyond the scope of an agreement to submit to a scheme for the future management of a dispute, appointment and removal of servants, and depository of property, collection of rents, &c. *Mána Vikrama Zamorin (Maharaja Bahadur of Calicut) v. Mallighery Kristnan Nam*, I. L. R., 3 Mad. 68. [July 26, 1880.]

PER SPANKIE, J.—An order refusing an application to file a private award in Court is appealable as a decree. *Jokun Rai v. Bucho Rai* (N. W. P. H. C. R. 1868, p. 353) and *Hussaini Bibi v. Mohain Khan* (I. L. R., 1 All. 156) impugned and distinguished; *Shahi* (I. L. R., 3 Bom. 18) distinguished. *PER STUART, C.J.*—An order refusing an application to file a private award in Court on grounds not mentioned in ss. 520 and 521 is a decree, and appealable as such.—*Janki Tewari and others v. Gayan Tewari and another*, I. L. R., 3 All. 427. [Jan. 11, 1881.]

THE power to file an award includes the power to inquire if there was a submission to arbitration, and this question is concluded by the decree which is final under ss. 526 and 522 of the Code of Civil Procedure.—*Micharya Gáruva v. Sadasiva Parama Gáruva*; I. L. R., 4 Mad. 319. [Dec. 5, 1881.]

Held by Melvill and Pothey, JJ.—Before effect can be given to an award by execution-proceedings, there must be judgment according to the award, and a decree following thereon. A judgment-debtor, against whom an order for execution has been obtained behind his back, is not estopped from afterwards contending that there exists no decree which can be executed.—*Ishwardás Jagjivandás v. Dosibáí*, I. L. R., 1 Bom. 316. [May 3, 1882.]

WHERE an award was made and signed by the arbitrators on the 5th August 1881, but was not delivered to the parties till the 13th of September following, *semble* that an application to file the award, made on the 25th of February 1882, under the provisions of s. 525 of the Code of Civil Procedure, was not barred by limitation. It is clearly the intention of the Legislature that a party to an arbitration should have six months to enforce an award, under s. 525 of the Code of Civil Procedure, from time to time when he is in position to enforce it. Under ss. 525 and 526 of the Code of Civil Procedure, the Court has full power to enter into the question of the sufficiency of the cause shown against the filing in Court of an award. *Dandekar v. Dandekars* (I. L. R., 6 Bom. 663) followed; *Ichamoyee Chowdhrahee v. Prosunno Nath Chowdhri* (I. L. R., 9 Cal. 557) dissented from. After an award has been made and handed to the parties, the functions of the arbitrators cease. They have no power afterwards to deal with an application for review of their decision.—In the Matter of the Petition of Datto Singh; *Datto Singh v. Dosad Bahadur Singh*, I. L. R., 9 Cal. 575. [Jan. 17, 1883.]

WHERE an application is made under s. 525 of the Code of Civil Procedure to have an award filed in Court, and it appears to the Court, on cause shown why the award should not be filed, that there is a reasonable dispute between the parties on any of the grounds mentioned in s. 520 or 521, the application should be dismissed. Under s. 525 of the Code of Civil Procedure, sufficient cause may be shown by affidavit or verified petition. *Sree Ram Chowdhry v. Denobundhoo Chowdhry* (I. L. R., 7 Cal. 490) and *Sashti Charan Chatterjee v. Tarak Chandra Chatterjee* (8 B. L. R. 315) referred to.—*Ichamoyee Chowdhrahee v. Prosunno Nath Chowdhri*, I. L. R., 9 Cal. 557. [July 31, 1883.]

THE parties to a suit having referred the matters in dispute between them to arbitration, the arbitrators, without being specially authorized to decide the question of costs, included in the award a direction that the defendant should pay the costs of the plaintiff. On the application of the plaintiff, the Subordinate Judge, under s. 526 of the Civil Procedure Code (Act XIV. of 1882), ordered the award to be filed, holding that the arbitrators had, as such, an implied power to deal with the costs. The defendant applied to the High Court, under its extraordinary jurisdiction, praying that the record of the case might be sent for, and the order of the Subordinate Judge set aside. Held that the arbitrators had no implied power to deal with the question of costs, and that, on the defendant's objection, the Subordinate Judge should have refused to file the award. Under the circumstances, the High Court, instead of setting aside the order to file the award, directed the award to stand good, except so far as it awarded costs, and that the decree should be drawn in accordance with it, as it would be if it contained no direction as to costs. In any case, where there is a disregard of the law amounting to an excess of jurisdiction or a perversion of the purposes of the Legislature, the High Court will interfere under its extraordinary jurisdiction where no other remedy is available.—*Dagdusa Tilakchand v. Bhukan Govind Shet*, I. L. R., 9 Bom. 82. [Sep. 15, 1884.]

WHERE an application was made to a Subordinate Judge to file an award, and an objection was taken that the arbitrators had made their award several months before the date of the one sought to be filed, thus impeaching the identity of the award, and the Subordinate Judge, after an inquiry with regard to the several objections, ordered the award to be filed, held that the order of the Subordinate Judge should be set aside, or the award be deemed not to have been filed. The only objections which the Court can inquire into under ss. 525 and 526 of the Civil Procedure Code (Act XIV. of 1882) are those which are specified in ss. 520 and 521, and these relate to cases in which the reference and the award are accepted facts; but where the objection denies the *factum* of the particular award sought to be filed, and the objection does not seem to be frivolous, but one giving rise to inquiry into difficult questions of law and fact, it is not competent for the Court to deal with the objection under ss. 525 and 526. In such a case the Court should leave the applicant to a regular suit on the award as the basis of his cause of action wherein the party urging the objection will have the advantage of being defendant rather than a plaintiff, and of having an appeal open to him in the event of an unfavourable decision.—*Sámal Nathu v. Jaishankar Dalsukráam*, I. L. R., 9 Bom. 254. [Dec. 2, 1884.]

CHAPTER XXXVIII.

OF PROCEEDINGS ON AGREEMENT OF PARTIES.

Extending to
Provincial S.
C. Courts.

527. Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing, stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,

(a) a sum of money fixed by the parties, or to be determined by the Court, shall be paid by one of the parties to the other of them; or

(b) some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

Every case stated under this section shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the question raised thereby.

Ditto.

528. If the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

Ditto.

529. The agreement, if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

Ditto.

530. When the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by the statements contained therein.

Ditto.

531. The case shall be set down for hearing as a suit instituted under Chapter V., the provisions of which shall apply to such suit so far as the same are applicable.

If the Court is satisfied, after an examination of the parties, or after taking such evidence as it thinks fit,

(a) that the agreement was duly executed by them, and

(b) that they have a *bona fide* interest in the question stated therein, and

(c) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so given a decree shall follow, and shall be enforced in the manner provided in this Code for the execution of decrees.

THE term "judicial proceeding," as used in Act X. of 1877, s. 2, must be understood to mean a judicial proceeding of the same nature as a suit or such proceedings as are referred to in ss. 323, 522, 526, and 531. The definition given in Act X. of 1872 is not applicable.—*Dalpatbhái Bhágubháí v. Amarsang Khema Bhai*, I. L. R., 2 Bom. 553. [Mar. 20, 1876.]

CHAPTER XXXIX.

OF SUMMARY PROCEDURE IN NEGOTIABLE INSTRUMENTS.

532. In any Court to which this section applies, all suits upon bills of exchange, hundis, or promissory notes, may, in case the plaintiff desires to proceed under this chapter, be instituted by presenting a plaint in the form prescribed by this Code; but the summons shall be in the form contained in the fourth schedule hereto annexed, No. 172, or in such other form as the High Court may, from time to time, prescribe.

In any case in which the plaint and summons are in such forms respectively, the defendant shall not appear or defend the suit, unless he obtains leave from a Judge, as hereinafter mentioned, so to appear and defend; and in default of his obtaining such leave, or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and a sum for costs to be fixed by a rule of the High Court, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be enforced forthwith.

The defendant shall not be required to pay into Court the sum mentioned in the summons, or to give security therefor, unless the Court thinks his defence not to be *prima facie* sustainable, or feels reasonable doubt as to its good faith.

Explanation.—This section is not confined to cases in which the bill, hundi, or note sued upon, together with mere lapse of time, is sufficient to establish a *prima facie* right to recover.

THE High Court has power to extend the time within which a defendant in a suit brought under chap. 39 (summary procedure on negotiable instruments) of the Civil Procedure Code can come in and obtain leave to defend; therefore, in a suit in which it appeared that the defendant resided at Peshawar, the time for the defendant to obtain leave from the Court to appear and defend was extended to 28 days.—Groom and another v. Wilson, I. L. R., 3 Cal. 539. [April 8, 1878.]

533. The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon the defendant paying into Court the sum mentioned in the summons, or upon affidavits satisfactory to the Court, which disclose a defence or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application, and on such terms as to security, framing and recording issues, or otherwise, as the Court thinks fit.

534. After decree, the Court may, under special circumstances, set aside the decree, and, if necessary, stay or set aside execution, and may give leave to appear to the summons and to defend the suit, if it seem reasonable to the Court so to do, and on such terms as the Court thinks fit.

No appeal lies under Act X. of 1877 from an order made under that Act rejecting an application for an order setting aside a decree made *ex parte* against a defendant.—Gulab Singh v. Lachman Das, I. L. R., 1 All. 748. [July 16, 1878.]

535. In any proceeding under this chapter the Court may order the bill, hundi, or note on which the suit is founded, to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

536. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this chapter for the recovery of the amount of such bill or note.

537. Except as provided by sections 532 to 536 (both inclusive), the procedure in suits under this chapter shall be the same as the procedure in suits instituted under Chapter V.

538. Sections 532 to 537 (both inclusive) apply only to—

- Application of chapter.
- (a) the High Courts of Judicature at Fort William, Madras, and Bombay ;
 - (b) the Court of the Recorder of Rangoon ;
 - (c) the Courts of Small Causes in Calcutta, Madras, and Bombay ;
 - (d) the Court of the Judge of Karachi ; and
 - (e) any other Court having ordinary original civil jurisdiction, to which the Local Government may, by notification in the official Gazette, apply them.

In case of such application the Local Government may direct by whom any of the powers and duties incident to the provisions so applied shall be exercised and performed, and make any rules which it thinks requisite for carrying into operation the provisions so applied.

Within one month after such notification has been published, such provisions shall apply accordingly, and the rules so made shall have the force of law.

The Local Government may, from time to time, alter or cancel any such notification.

CHAPTER XL

OF SUITS RELATING TO PUBLIC CHARITIES.

539. In case of any alleged breach of any express or constructive trusts created for public charitable or religious purposes, or whenever the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General acting *ex officio*, or two or more persons having a direct interest in the trust, and having obtained the consent in writing of the Advocate-General, may institute a suit in the High Court or the District Court within the local limits of whose civil jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree—

- (a) appointing new trustees under the trust ;
 - (b) vesting any property in the trustees under the trust ;
 - (c) declaring the proportions in which its objects are entitled ;
 - (d) authorizing the whole or any part of its property to be let, sold, mortgaged, or exchanged ;
 - (e) settling a scheme for its management ;
- or granting such further or other relief as the nature of the case may require.

The powers conferred by this section on the Advocate-General may, outside the Presidency-towns, be, with the previous sanction of the Local Government, exercised also by the Collector or by such officer as the Local Government may appoint in this behalf.

Act No. X. of 1840, section two, is hereby repealed.

WORSHIPPERS or devotees of an idol are entitled to bring a suit, concerning of a breach of trust, with reference to the funds or property belonging to the idol or appendant to its temple.—*Quere.* Whether, if the suit had been brought after Act X. of 1877 came into force, s. 539 of that Act could be held applicable to the *devasthan* of an idol or temple, dedicated merely to the purposes of such idol or temple?—*Rádhabái Kom Chimpáji Sáli v. Chinnáji bin Áámji Sáli*, I. L. R., 3 Bom. 27. [Aug. 14, 1878.]

IN a suit by two of the worshippers at a certain mosque, instituted after having obtained the sanction of the Advocate-General under s. 539 of the Civil Procedure Code, against the mutawalli of the mosque, and two other persons to whom the mutawalli had mortgaged part of the endowed property to secure the repayment of a loan, it appeared that one of the mortgagees had sold some of the waqf property in execution of a decree which he had obtained upon his mortgage, and the property had been purchased by the other mortgagee. The plaintiffs prayed that the property purchased might be declared to be waqf; that the sale in execution might be declared to be invalid; that a mutawalli might be appointed by the Court; and that the costs of doing the acts of waqf might be defrayed from the profits of the property belonging to the endowment. *Held* that, so far as regarded that portion of the prayer as fell within the provisions of s. 539 of the Code, the plaintiffs were not entitled to sue, as they were not "persons having a direct interest in the trust" within the meaning of the section, and that the suit should have been instituted under s. 14 of Act XX. of 1863 after sanction obtained under s. 18. *Held* also that though the plaintiffs might possibly have obtained leave to sue under s. 30 of the Code on behalf of themselves and the other persons attending the mosque, they not having obtained such leave were not entitled to institute the suit for the purpose of obtaining the relief asked for in the other prayers of the plaint. The words "trustee, manager, or superintendent of a mosque," &c., mentioned in Act XX. of 1863, mean the trustee, manager, or superintendent of a mosque, &c., to which the provisions of the Act are applicable, not the trustee, &c., of any mosque. And such persons are those to whom the provisions of Reg. XIX. of 1810 were applicable. The mosque, &c., to which the provisions of that Regulation were applicable, were mosques for the support of which endowments had been granted in land by the Government of the country or by individuals, and the mosques, &c., to which the provisions of Act XX. of 1863 apply are, not any mosques, &c., but any mosques for the support of which endowments in land have been made by the Government or private individual.—*Jan Ali v. Ram Nath Mundul*, I. L. R., 8 Cal. 32. [Aug. 12, 1881.]

S. 539 of the Civil Procedure Code, 1877, does not apply to the case of an endowment for purposes religious as well as charitable.—*Thanga Karuppa Nádan v. Arumánga Nádan*, I. L. R., 5 Mad. 383. [Aug. 23, 1882.]

CERTAIN Mahomedans sued to set aside a mortgage of endowed property belonging to a mosque, the decree enforcing the mortgage, and the sale of the mortgaged property in execution of that decree, and for the demolition of buildings erected by the purchaser, and the ejectment of the purchaser. *Held* that the plaintiffs, as Mahomedans entitled to frequent the mosque and to use the other religious buildings connected with the endowment, could maintain the suit, and s. 539 of the Civil Procedure Code had no application to the case, the endowment being a religious institution within the meaning of s. 24 of Act VI. of 1871, and therefore governed by Mahomedan law.—*Zafaryab Ali v. Bakhtawar Singh*, I. L. R., 5 All. 497. [Mar. 27, 1883.]

IN or about the year 1839 a temple to the god Shri Anantnathji was erected in Bombay by the Dossa Oswal Banja caste, the religion of which caste is the Jain religion. A large portion of the funds required for building the temple was advanced by one Nursey Náthá, at that time the leading man in the caste; the rest was obtained from the caste by subscription. The firm of Nursey Náthá acted as the bankers to the caste and to the temple, received all the gifts and offerings made by the worshippers, and for many years administered all the affairs of the temple. The sums advanced by Nursey Náthá were gradually, but entirely, repaid to him out of the gifts and offerings. There were three separate funds, of which separate accounts were kept in the books, viz., (1) the darása fund, which was devoted to the temple purposes, such as maintenance of priests, repairs,

&c., and gifts to poorer temples; (2) the sadāran fund, which was more extended in its objects, but still limited to religious and charitable purposes, such as payments to poor devotees irrespective of their caste, &c.; and (3) the mahājan fund, which was devoted to caste purposes, such as purchase of caste utensils, &c. All three funds were collected at the temple. Gifts and offerings were made by all worshippers at the temple, whether members of the caste or not. Subscriptions were made only by members of the caste. All the regular subscriptions came from the caste exclusively, and the great bulk of the gifts and offerings came from the caste also. Only about Rs. 12,000 had been given by outsiders up to the date of the suit, while nearly 6 lakhs had been given by the caste. Nursey Natha died in 1842, and his adopted son Virji Nursey became head of the firm, which continued to manage the funds of the temple under the name of Virji Nursey & Co. Virji Nursey died in 1852, and Hurbhum Nursey (defendant No. 1) succeeded him. The firm meanwhile had invested the funds of the temple in eight lots of immovable property. In 1867 the caste determined to appoint trustees of the temple-property, and in September 1867 a trust-deed was executed, whereby Hurbhum Nursey, Kessowji Naik, Ghelābhoy Puddumsey (defendants Nos. 1, 2, and 3), together with three others who were dead at the time of this suit, *viz.*, Jewraj Ruttonsey, Triumji Wellji, and Madan Tejsey, were appointed trustees of all the immovable property belonging to the temple. The deed set forth the objects to which the income of the property should be applied, and provided that the surplus should be invested in Government securities, in corporation shares, or in landed property, but in no other shares of any description whatsoever. It also authorized the trustees to invest surplus moneys in the firm of Virji Nursey. It was admitted that, subsequently to June 1869, the trustees managed the temple, and not only the immovable property, but all the funds. A debt of Rs. 2,40,000 was due from the firm of Virji Nursey & Co. to the temple and caste when the trustees took over the management. In 1870 the firm of Virji Nursey & Co. became insolvent, and in their schedule the trustees were entered as creditors in respect of darāsa account, Rs. 1,57,649; on mahājan account, Rs. 68,017; on sadāran account, Rs. 22,597. It was admitted that the trustees knew of this entry in the said schedule. They, however, received no dividend, although other creditors, including Kessowji Naik (defendant No. 2), were paid two annas in the rupee. This sum of Rs. 2,40,000 due to the temple was wholly lost. In April 1867, Rs. 15,000 of the temple-funds were invested—it did not appear by whom—in the name of Ghelābhoy Puddumsey (defendant No. 3), and in August 1868 a sum of Rs. 15,000 was advanced to one Jairaz Pirbhoy. In 1869 a sum of Rs. 10,000 was advanced by the trustees to Nursey Kessowji & Co., which was never repaid, nor was any interest received upon it. It was lost on the failure of that firm in 1879. The principal partner of that firm (Nursey Kessowji) was the only son of Kessowji Naik (defendant No. 2), who also had an interest in it. In 1877-78 various loans were made by the trustees to three mills, in which one or more of the trustees was interested. Of Rs. 55,000 lent to the mills and to Nursey Kessowji & Co. Rs. 42,000 were lost. Half a lakh of outstanding gifts to the temple remained uncollected owing to the negligence of the trustees. Two suits brought by another caste against the trustees were defended out of the temple-funds. All the defendants (trustees), with the exception of Kessowji Naik, were in needy circumstances. In 1880 a hundred members of the caste protested against the management of caste and temple affairs by the defendants. The plaintiffs, six in number, took part in the protest, and filed the present suit in 1881. Thereupon there was a caste agitation in favour of the defendants, who were all shettis of the caste. A meeting of the caste was held, and a series of resolutions, supporting the defendants' management, and approving of their conduct, was passed, and a document to that effect was signed by 1,468 persons—the whole caste in Bombay numbering only 1,500. The plaintiffs sought to make the defendants liable in respect of the moneys lost to the caste and temple-funds, and prayed for the appointment of new trustees and for the settlement of a scheme. The defendants denied the charges of negligence, and pleaded that the suit was not properly constituted, not having been brought under s. 30 or 539 of the Civil Procedure Code of 1877, and that it was in contravention of Reg. II. of 1827, ch. 2, s. 21. They relied upon the fact that the caste had approved of their conduct, and had allowed them to defend this suit at the expense of the caste. They contended that under these circumstances the plaintiffs were not entitled to maintain the suit, and that the Court would not interfere with, or control the decision of the majority of, the caste in matters relating to the internal management of its affairs. *Held* that s. 30 of the Civil Procedure Code (Act X. of 1877) did not apply. If the plaintiffs had any right of action, it was a complete right of action vested in each of them, and not a mere joint right shared with others, and incomplete unless they united themselves with others. They sued as subscribers to the temple and devotees of the idol, and, as such, each had a right to complain of maladministration. They were entitled to sue in their own right and in their own name without permission of the Court or notice to other parties interested. *Held* also (following *Thanga Karuppa v. Arumuga*

Nadan (I. L. R., 5 Mad. 383), that s. 539 of Act X. of 1877 did not apply. The three funds administered by the defendants were different in character. The mahajan fund was a purely secular fund; the other two funds were religious and charitable funds. Even if the case came under the Civil Procedure Code (Act XIV. of 1882), s. 539 would not apply, that section being permissive or directory, and not mandatory. Any person interested in the proper observance of a religious endowment may sue in his own name to have the trust properly administered. The section does not prohibit a private suit, and does not make the sanction of the Advocate-General a condition precedent. The gifts to the temple comprised in the darasa and sadaran funds were irrevocably dedicated to public charity, and, therefore, the approval, by the caste, of the conduct of the trustees, was no bar to the suit. They were also dedicated to the idol, who was a public, not a mere private household divinity. The ideal personality of such an idol is well recognized, and in case of misappropriation of the property he is entitled to the protection of the public authorities, on the ground that it has been devoted to public religious purposes, and must not be wasted even by the donors. The management of the temple belonged to the Desai Oswal Bania caste, and not to the whole Jain community. Although the donations were irrevocably dedicated to public purposes, the donors had never lost the right, which was attached to the caste from the beginning, of managing the temple which they had founded, and their management could only be interfered with as a public charitable trust on proof of maladministration. On the evidence, held that the defendants were not liable for losses prior to 1867. It was not clearly proved that they were managers of the temple-funds before that date. Held also that the defendants were liable for the losses incurred subsequently to 1867. They assumed the management on the execution of the trust-deed in that year, and ought to have taken steps to recover the money which had been improperly advanced on loan or otherwise negligently invested. Not having done so, they were guilty of wilful neglect, and were liable to refund the moneys which had been lost. The liability was, however, confined to the first three defendants, it not being proved that the remaining defendants had ever acted as trustees. The negligence of the trustees in not taking steps to recover the Rs. 2,40,000 due from the firm of Virji Nursey & Co. was a clear breach of trust. The evidence showed that although the whole sum could not have been recovered at any time during the trusteeship of the defendants, yet that some portion of the money might have been obtained if due diligence had been used, and that other creditors of the firm had actually been paid two annas in the rupee. The first three defendants were, therefore, liable to refund two annas in the rupee of such portion of the Rs. 2,40,000 as belonged to the darasa and sadaran funds. As to the mahajan fund, it belonged to the caste, and the caste had condoned its misapplication, which it had power to do. The defendants were also held liable to refund such other sums as had come into their hands, and had been lost in consequence of their negligence. Held also that, under the provision of s. 10 of the Limitation Act (XV. of 1877), the suit was not barred. The property became vested in the defendants for specific purposes; and, although it was no longer in their hands, the suit fell within the section, inasmuch as the money could be traced to the hands of the trustees, and the losses were caused by their misconduct and improper dealing with it. The Court removed the defendants from the trusteeship, and ordered a scheme to be settled.—Thackersey Dewraj v. Hurbhum Nursey, I. L. R., 8 Bom. 432. [June 20, 1884.]

THE plaintiff sued to recover possession as *mutwali* of certain parcels of land, alleging that they were dedicated as waqf, and that the profits were "applied to the feeding of wayfarers and travellers, to lighting the mosque and shrine in the evening, and to meeting the expenses of repeating prayers on the occasion of *Id* and *Bakhrud*, and that the said profits were never spent for personal purposes." The plaintiff based her right to sue upon the fact that her deceased husband had been *mutwali*, and she prayed that the property in suit might be declared waqf, and that certain alienations made by her step-son since her husband's death might be set aside. Held that the trust to which the suit related was, one partly for charitable and partly for religious purposes. As far as it related to the former, it was governed by s. 539 of the Civil Procedure Code, and if viewed in the light of the latter, by Act XX. of 1863; and that the suit, not being properly framed in compliance with the provisions of either of those enactments, was not maintainable. Held, further, that even supposing the endowment alleged was neither a public charity within the meaning of s. 539 of the Civil Procedure Code, nor a religious endowment to which Act XX. of 1863 applied, the plaintiff was not entitled to sue alone, as it was clear upon the face of the plaint that she was not alone interested in the subject-matter of the suit, and therefore that she could only sue on behalf of all who were so interested, having first obtained the leave of the Court and otherwise complied with the provisions of s. 30 of the Civil Procedure Code.—Lutifunissa Bibi v. Nazirun Bibi, I. L. R., 11 Cal. 33. [Aug. 29, 1884.]

A MUHAMMADAN brought a suit against a person in possession of certain property, for a declaration that the property was waqf. He did not allege himself to be interested in the property further or otherwise than as being a Muhammadan. He stated as his cause of action that the defendant had, in a former suit between the same parties, filed a written statement, in which he denied that the property now in question was waqf. *Held* that, unless it could be shown that the suit was maintainable under some statutory provision, it could not be maintained. *Held* that, inasmuch as no permission had been given to the plaintiff to bring the suit, it was not maintainable under Act X. of 1863, or under s. 539 of the Civil Procedure Code. *Held* that the suit was not maintainable under the provisions of s. 42 of Act I. of 1877 (Specific Relief Act). *Held*, therefore, that the suit was not maintainable. *Held*, further, that the relief contemplated by s. 42 of the Specific Relief Act being always a matter of the Court's discretion, and inasmuch as the evidence adduced by the plaintiff himself showed that the defendant was using the property for charitable purposes, it would not be proper to make the declaration prayed for by the plaintiff, even if the suit were maintainable.—*Wajid Ali Shah v. Dianat-ul-lah Beg*, I. L. R., 8 All. 31. [Nov. 26, 1885.]

PART VI. OF APPEALS.

CHAPTER XLI.

APPEALS FROM ORIGINAL DECREES.

540. Unless when otherwise expressly provided by this Code or by any other law for the time being in force, an appeal shall lie from the decrees, or from any part of the decrees, of the Courts exercising original jurisdiction to the Courts authorized to hear appeals from the decisions of those Courts.

Appeal to lie from all original decrees, except when expressly prohibited. . .

WHERE the Court of first instance held that the land sued for was not included in the defendant's garden, and they were not the owners of it, but that they could not be ejected from it, as they were in possession under a lease which had not expired, and that the question whether such land was included in the defendant's garden, and that they were the owners of it, was not *res judicata*; and the Court made a decree dismissing the suit in these terms, "Ordered that the plaintiff's claim as it stands at present be dismissed:" *Held* that the defendants were entitled, under Act X. of 1877, s. 540, to appeal from such decree.—*Lachman Singh v. Mohan*, I. L. R., 2 All. 497. [Nov. 28, 1879.]

APPLICATIONS for the extension of the period for the submission of an award and orders thereon should be made in writing and recorded. When a party has been prejudiced by having the time allowed for taking objections to an award curtailed by the Court, no appeal lies, but a review should be granted by the Court of first instance.—*Monji Premji Set v. Maliyakel Koyassan Koya Hujji*, I. L. R., 3 Mad. 59. [Jan. 27, 1880.]

AN appellânt, who has obtained a decree setting aside the decision of the Court of first instance, is not entitled to a further appeal to the High Court, on the ground that he is dissatisfied with some of the findings recorded in the judgment of the lower Appellate Court, an appeal from an appellate decree under s. 58 being strictly restricted to matters contained in the decree alone.—*Koylash Chunder Koosari v. Ram Lall Nag*, I. L. R., 6 Cal. 206. [May 20, 1880.]

THE plaintiffs, the widow and son respectively of N, deceased, claimed immoveable property inherited from his father by N, and also immoveable property which had devolved upon N from his brother, who had predeceased him, and mesne-profits of such properties. The Court of first instance, finding that the claim to the former property was admitted, and that to the latter was not denied, but resisted as barred by s. 13 of Act X. of 1877, and holding it not to be so barred, made a decree returning the plaint to the plaintiffs that they might, after correcting it, file it either in the Revenue Court in regard to the profits of the former property, or in the Civil Court for possession of the latter property. *Held* that, although the claim of the plaintiffs was not either decreed or dismissed, yet as the

right and title asserted by them to such properties was implicitly recognised by such decree, the defendants were entitled to appeal from it.—*Behari Bhagat v. Begum Bibi*, I. L. R., 3 All. 75. [July 19, 1880.]

M SUE D K and **J** to enforce a right of pre-emption in respect of property which he alleged **K** had sold to **J**. **K** denied that she had sold such property to **J**. **J** set up as a defence that **M** had waived his right of pre-emption. The Court of first instance dismissed the suit on the ground that the alleged sale had not taken place. **J** appealed, making **M** and **K** respondents. The lower Appellate Court dismissed the appeal, also holding that the alleged sale had not taken place. **J** then appealed to the High Court, making **K** the respondent. *Held* that neither the appeal from the original decree in suit, nor the appeal from the appellate decree therein, was admissible. *Held* also that the finding as to the alleged sale was one between the plaintiff and defendants in the suit, and not between the defendant-vendor and the defendant-vendee who were litigating, and would not bar adjudication of the matter in issue between them in a suit brought by the latter for the establishment of the sale.—*Jumna Singh and another v. Kamar-un-nisa*, I. L. R., 3 All. 152 (F. B.). [Aug. 12, 1880.]

NOTHING remained to be done in a suit except to hear arguments, for which a time had been appointed. Neither the plaintiff nor his pleader appeared at the appointed time. The Court consequently dismissed the suit. *Held* that its decree was appealable under s. 540 of Act X. of 1877, and the lower Appellate Court should have entertained the appeal and disposed of it with reference to the provisions of s. 565, and ss. 102 and 103 were not applicable to the circumstances.—*Raichand v. Mathura Prasad*, I. L. R., 3 All. 292. [Nov. 25, 1880.]

By a decree in an administration-suit, **A** was appointed receiver "to manage the estate." **A** died, and by a subsequent order **B** was appointed receiver. One of the defendants in the suit applied to have **B** removed from the office of receiver on the ground of his alleged mismanagement of the estate. The application was refused. *Held* that the order of refusal was appealable, whether the former Code or the present Code of Civil Procedure was deemed to be applicable, being an order made in respect of a question arising between the parties to a suit relating to the execution of the decree.—*Mithibai v. Limji Nowroji Banaji ; Harivallubhdas Callandas v. Ardasar Framji Moos*, I. L. R., 5 Bom. 45. [Dec. 3, 1880.]

An order under s. 556 of Act X. of 1877, dismissing an appeal for the appellant's default, is not a "decree" within the meaning of s. 2, and is not appealable.—*Mukhi v. Fakir*, I. L. R., 3 All. 382. [Dec. 22, 1880.]

Per Spankie, J.—An order refusing an application to file a private award in Court is appealable as a decree. *Jokhun Rai v. Bucho Rai* (N. W. P. H. C. R. 1868, p. 353) and *Hussaini Bibi v. Mohsin Khan* (I. L. R., 1 All. 156) impugned and distinguished: *Vishun Bhau Joshi v. Ravji Bhau Joshi* (I. L. R., 3 Bom. 18) distinguished. *Per Stuart, C.J.*—An order refusing an application to file a private award in Court on grounds not mentioned in ss. 520 and 521 is a decree, and appealable as such.—*Janki Tewari v. Gayan Tewari*, I. L. R., 3 All. 427. [Jan. 11, 1881.]

The lower Appellate Court (Subordinate Judge) decided on appeal by the defendant from the decree of the Court of first instance (Munsif) that the Court of first instance had no jurisdiction to entertain the suit, as the value of the subject-matter of the suit exceeded the pecuniary limits of its jurisdiction; and ordered that "the appellant's appeal be decreed, the decision of the Munsif be reversed, and the record of the case be sent to the Munsif to return the plaint to the plaintiff for presentation to the proper Court." The plaintiff appealed to the High Court from such order as an order returning a plaint to be presented to the proper Court. *Held* that such order could not be regarded as one to which art. 6 of s. 588, Act X. of 1877, was applicable. That relates to orders returning plaints for amendment or to be presented to the proper Court passed by a Court of first instance, and not to an order by an Appellate Court upon an appeal to it from the decree of a Court of first instance on general grounds. The plaintiff's proper course was to have preferred a second appeal.—*Bindeshri Chaubey and others v. Nanda*, I. L. R., 3 All. 456. [Jan. 28, 1881.]

WHEREAS a Judge, after the defendant's written statement was put in, framed certain preliminary issues, and decided them, directing part of plaintiff's claim to be dismissed, and part to be tried on the merits (which trial might necessitate the taking of an account from defendant), *held* that no appeal lies from such an order either on the part of the plaintiff because the Civil Procedure Code only allows an appeal against a portion of the decision when there has been a decision relating to the disposal of the entire suit, or on the part of

defendant inasmuch as there had been no final order to take an account.—*Udri Rájah Rája Velugoti Kumára Yáchama Náyadu Bahadur, Panch Hazar Munsudár Rája of Venkatagiri v. Mahommed Rahimtulla Sahib*, I. L. R., 3 Mad. 13. [Mar. 28, 1881.]

An order made under s. 37, Bengal Rent Act (Beng. Act VIII. of 1869), is a decree within the meaning of the definition contained in the Civil Procedure Code (Act X. of 1877), and an appeal lies therefrom under the provisions of s. 540.—*Brojendro Coomar Roy v. Krishno Coomar Ghose*, I. L. R., 7 Cal. 684. [July 25, 1881.]

Under s. 540 of the Civil Procedure Code an appeal lies from decrees passed *ex parte*. If a defendant appears at the first hearing, and files a written statement, he should not be placed *ex parte*.—*Anantharama Patter v. Madhava Paniker*, I. L. R., 3 Mad. 264. [Sep. 8, 1881.]

At the hearing of a suit, a party, though he had sufficient warning of what was necessary, did not take the proper steps to cause the production of the documentary, and only admissible evidence of a material fact which had to be proved by him; and the decision was against him. The record of another proceeding would, it was said, have supplied this evidence; and an application had been previously made, on which the order of the Judge was that "the matter would be decided when the case was tried, and the record would be sent for, if necessary." No further application to the Court was made, and no attempt to supply this evidence. Held that if there had been, as there might have been, an oversight by the party in not calling the attention of the Judge to the above order, and in not tendering the evidence, there had been no omission on the Judge's part affording ground for appeal.—*Chandi Churn Shashmal v. Durga Churn Mirdua*, I. L. R., 9 Cal. 260. [Mar. 17, 1882.]

Held by Stuart, C.J., and Straight and Tyrrell, JJ. (Oldfield and Brodhurst, JJ., dissenting), that a defendant against whom a decree has been passed *ex parte*, and who has not adopted the remedy provided by s. 108 of the Civil Procedure Code, cannot appeal from such decree under the general provisions of s. 540.—*Lal Singh v. Kunjan*, I. L. R., 4 All. 387. [April 27, 1882.]

Per Oldfield, J.—When an original decree is amended under s. 206 of the Civil Procedure Code, it, as amended, is the decree in the suit; and an appeal, therefore, lies from it under the provisions of s. 540, when the validity of the amendment can be questioned. The matter of amending a decree under s. 206 does not by itself constitute a "case" within the meaning of s. 622 of the Civil Procedure Code, but forms part of the proceedings in the suit in which the decree is made. Held therefore, *per* Oldfield, J., that, where an original decree, which was appealable, was amended by the Court of first instance, under s. 206 of the Civil Procedure Code, the High Court had no power to revise such amendment under s. 622 of the Code. *Per* Mahmood, J.—An order passed under s. 206 amending a decree is a separate adjudication, and is not merely a part of the original decree, and cannot alter its date, and such an order is not appealable under s. 588 of the Code. Such an order, therefore, can be revised by the High Court under s. 622.—*Raghunath Bas v. Raj Kumar*, I. L. R., 7 All. 276. [Dec. 22, 1884.]

In a suit to obtain possession of certain property, and to set aside a deed called a deed of endowment (*wagfnama*), on the ground that the defendant had fraudulently obtained its execution, the defendant pleaded (i) that the deed was a valid one, and (ii) that she was in possession of the property in satisfaction of a dower-debt, and her possession could not be disturbed so long as the debt remained unsatisfied. The Court of first instance held that the deed was invalid, but that the defendant was entitled to remain in possession of the property till her dower-debt was satisfied, and the Court passed a decree which merely dismissed the suit, without embodying the finding as to the deed. On appeal by the plaintiff to the District Judge, the defendant filed objections under s. 561 of the Civil Procedure Code in regard to the first Court's decision that the deed of endowment was invalid. The Judge dismissed the plaintiff's appeal, affirming the finding as to dower, and, refusing to decide the question of the validity of the deed, as being unnecessary for disposal of the claim, disallowed the defendant's objections. The defendant appealed to the High Court. Held by the Full Bench (Oldfield and Mahmood, JJ., dissenting) that if a decree is, upon the face of it, entirely in favour of a party to a suit, such decree being the thing which by law is made appealable, and nothing else, that party has no right of appeal therefrom. If, in the judgment of which such decree is the formal expression, findings have been recorded upon some issues against that party, and he desires to have formal effect given to them by the decree, so as to allow of his filing objections thereto under s. 561 of the Civil Procedure Code, or of appealing therefrom under s. 540, he must take steps under s. 206 to have the decree properly brought into conformity with the judgment, so that there may be matter on the face of it to show that something has been

decided against him; but if he fails to take this course, the decree, though in general terms, will stand good as finally deciding the issues raised by the pleadings upon which the ultimate determination of the cause and the decree itself rested. The findings in a judgment upon matters which subsequently turn out to be immaterial to the grounds upon which a suit is finally disposed of, as to the plaintiff's right to any portion of the relief sought by him as declared by the decree, amount to no more than *obiter dicta*, and do not constitute a final decision of the kind contemplated by s. 13 of the Civil Procedure Code. *Held* also that, in the present case, the Judge was right in holding that the question as to the validity or otherwise of the deed of endowment was wholly immaterial. The judgment of Straight, J., in *Lachman Singh v. Mohan* (I. L. R., 2 All. 497), approved and followed. *Per* Oldfield, J., *contra*, that the decree, to agree with the judgment and fulfil the requirements of s. 206 of the Civil Procedure Code, should contain the material points for determination arising out of the claim and material for the decision thereon; that if this has not been done, the defect is a good ground of appeal, notwithstanding that the decree, on its face, may be altogether in favour of the appellant, and notwithstanding that he may not have applied for amendment of the decree under s. 206, or for review of judgment; and that, in the present case, the defect in the decree would afford a good ground of appeal. *Per* Mahmood, J., that inasmuch as the provisions of s. 13 of the Civil Procedure Code relate as well as to the trial of issues as to the trial of suits, and in the present case the validity or otherwise of the deed was a matter directly and substantially in issue between the parties, and was adjudicated upon, the finding of the first Court upon that issue was not a mere *obiter dictum*, but would be binding upon the defendant as *res judicata*, notwithstanding the fact that the suit against her was dismissed on the ground that she held possession of the property in lieu of dower; that whatever has the force of *res judicata* is necessarily appealable; that the word "from" as used in s. 540 or s. 584, and the expression "objection to the decree" in s. 561, refer not only to matters existing upon the face of the decree, but also to those which should have existed, but do not exist there; and that the defendant in the present case was aggrieved or injured by the omission in the decree of the first Court, and was therefore entitled to file objections to it, and, for the same reason, to appeal to the High Court from the decree of the lower Appellate Court. Also *per* Mahmood, J., that it was doubtful whether the reliefs contemplated by ss. 206 and 623 were open to the defendant; but that, even conceding that she ought to have sought her remedy under either of those sections, her neglect to do so did not make her incapable of obtaining the same result by the exercise of her right of appeal. *Anusuyabai v. Sakkaram Pandurang* (I. L. R., 7 Bom. 484), *Man Singh v. Narayan Das* (I. L. R., 1 All. 480), *Mohau Lal v. Ram Dayal* (I. L. R., 2 All. 849), *Niamat Khan v. Phadu Buldia* (I. L. R., 6 Cal. 319), and *Pan Kuar v. Bhagwant Kuar* (N. W. P., H. C. R., 1874, p. 19), referred to.—*Jamaitunissa v. Lutfunnissa*, I. L. R., 7 All. 606. [Feb. 21, 1885.]

THE plaintiff's claim to redeem certain lands was rejected by a Subordinate Judge on 21st December 1882. On the 1st February 1883, the plaintiff, who was an agriculturist, presented an application for review to the Special Judge appointed under the Dekkhan Agriculturists' Relief Act. His application was rejected by that Judge, who was of opinion that the plaintiff's remedy lay in an appeal to the District Judge. The plaintiff was not informed of the result of his application to the Special Judge until the following May, at which time the Court of the District Judge was closed for vacation. On the 3rd June 1883, he presented an appeal on the opening of the District Court. The District Judge dismissed the appeal as barred by limitation. On appeal to the High Court, a preliminary objection being taken that a second appeal would not lie, *held* that the order of the District Judge, having the force of a decree within the meaning of s. 2 of the Civil Procedure Code (Act XIV. of 1882), was appealable under s. 540 of the Code. Order discharged under the circumstances, the District Judge having given no reasons for making the order.—*Raghu Nath Gopál v. Nilu Nátháji*, I. L. R., 9 Bom. 452. [Mar. 31, 1885.]

POVERTY is not "sufficient cause," within the meaning of s. 5 of the Limitation Act, (XV. of 1877), for admitting an appeal after the ordinary period of limitation prescribed therefor has expired.—*Moshaulah v. Ahmedullah*, I. L. R., 13 Cal. 78. [Feb. 11, 1886.]

HELD by the Full Bench (Straight, Offg. C.J., and Tyrrell, J., expressing no opinion), that a respondent in whose absence the appeal has been heard *ex parte*, and against whom judgment has been given, may prefer a second appeal from the decree under the provisions of s. 584 of the Civil Procedure Code, and his remedy is not limited to an application under s. 560 to the Court which passed the decree to re-hear the appeal. *Ramjas v. Baijnath* (I. L. R., 2 All. 567) approved. *Per* Oldfield, J.—There is a distinction between the case of a defendant in a Court of first instance and that of a respondent in

an Appellate Court not appearing with reference to ss. 108 and 560 of the Code. *Lal Singh v. Kunjan* (I. L. R., 4 All. 387) and *Ramshet Buchaset v. Balkishna Ababhat* (6 Bom. H. C. R., 161) referred to. *Per* Mahmood, J.—The distinction is one of detail merely, and not of principle. *Lal Singh v. Kunjan* (I. L. R., 4 All. 387) dissented from. *Zain-ul-ab-din Khan v. Ahmad Raza Khan* (I. L. R., 2 All. 67; L. R. 5. Ind. Ap. 233), *Jamait-un-nissa v. Luft-un-nissa* (I. L. R., 7. All. 606), *Askruft-un-nissa v. Leliareaux* (I. L. R., 8 Cal. 272), *Luokhmidas Vithaldas v. Ebrahim Oosman* (I. L. R., 2 Bom. 644), *Anantharama v. Madhava Penikar* (I. L. R., 3 Mad. 264), and *Modakhat's Case* (I. L. R., 2 Mad. 757) referred to. Also *per* Mahmood, J.—Where two procedures or two remedies are provided by statute, one of them must not be taken as operating in derogation of the other.—*Ajudhia Prasad v. Bahmukand*, I. L. R., 8 All. 354. [May 10, 1886.]

S. 5 of the Limitation Act gives a discretion to a Court to admit an appeal filed out of time. A valued his suit at Rs. 18,000, which was reduced to less than Rs. 5,000 by the Court of first instance at Rajshahye. A decree, dated the 20th December 1883, was given against the defendant, who applied for copies on the 3rd of February, and the decree was ready on the 7th. The defendant was apparently under the impression that the appeal would lie to the High Court; but on the 16th of March a letter was despatched by his Calcutta agent informing him that he was mistaken, and that the appeal lay to the District Judge. This letter reached Rajshahye on the 17th, and the appeal was filed on the 23rd of March. *Held* that, under the circumstances, the Court might admit the appeal in the exercise of its discretion under s. 5 of the Limitation Act.—*Huro Chunder Roy v. Surnamoyi*, I. L. R., 13 Cal. 266. [May 31, 1886.]

AN appeal from the Court of the Recorder of Rangoon to the High Court is an appeal under the Civil Procedure Code, and must be made within the time prescribed by art. 156, sch. ii. of the Limitation Act.—*Aza Mahomed Hamedani v. Cohen*, I. L. R., 13 Cal. 221. [July 22, 1886.]

THE proviso in s. 49 of the Burma Courts Act amounts to an express declaration that it is a condition precedent to the right of appeal from the Recorder's Court that the suit shall be one which has an amount or value capable of being estimated in money, and that that amount or value must fall within certain specified limits. A suit for the restitution of conjugal rights is incapable of being valued, and no appeal therefore in such a suit will lie under the Burma Courts Act from a decision of the Recorder of Rangoon.—*Golam Rahman v. Fatima Bibi*, I. L. R., 13 Cal. 232. [July 26, 1886.]

541. The appeal shall be made in the form of a memorandum in writing

Form of appeal.

presented by the appellant, and shall be accompanied by a copy of the decree appealed against and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

What to accompany memorandum.

Such memorandum shall set forth, concisely and under distinct heads,

Contents of memorandum.

the grounds of objection to the decree appealed against, without any argument or narrative; and such grounds shall be numbered consecutively.

AN order made under Act X. of 1877, s. 409, refusing leave to sue as a pauper, is subject to review under s. 623. The provisions of s. 413 do not affect the right of a person against whom such order has been made to obtain a review. A petitioner applying for such review must file a copy of the order of which he seeks a review, together with a memorandum of objections (ss. 541 and 625).—*Adarji Edulji v. Manikji Edulji*, I. L. R., 4 Bom. 414. [July 12, 1880.]

542. The appellant shall not, without the leave of the Court, urge or

Appellant confined to grounds set out, be heard in support of any other ground of objections; but the Court, in deciding the appeal, shall not be confined to the grounds set forth by the appellant:

Provided that the Court shall not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of contesting the case on that ground.

Not only may the plea of *res judicata*, though not taken in the memorandum of appeal, be entertained in second appeal, under the provisions of s. 542 of Act X. of 1877, but even when such plea has not been urged in either of the lower Courts or in the memorandum of appeal, if raised in the second appeal, it must be considered and determined either upon the record as it stands, or after a remand for finding of fact.—*Muhammad Ismail v. Chatter Singh*, I. L. R., 4 All. 69, [July 11, 1881.]

Held by Pearson, J., and Straight, J. (Spankie, J., dissenting), as follows: That, in disposing of a second appeal, the High Court is competent, under s. 542 of Act X. of 1877, to consider the question whether the plaintiff has any cause of action or not, although such question has not been raised by the defendant-appellant in the Courts below or in his memorandum of second appeal, but is raised for the first time at the hearing of such appeal. That the cause of action of a person claiming the right of pre-emption in the case of a conditional sale arises when the conditional sale takes place, and not when it becomes absolute; and therefore, where a conditional sale took place in 1867, and it had become absolute a person sued to enforce his right of pre-emption in respect of the property sold, basing his claim upon a special agreement made in the interval between the date of the conditional sale and the date that it became absolute, and alleging that his cause of action arose on the latter date, that the suit was not maintainable, the plaintiff having no right of pre-emption at the time of the conditional sale.—*Lachman Prasad v. Bahadur Singh*, I. L. R., 2 All. 384. [May 7, 1883.]

543. If the memorandum of appeal be not drawn up in the manner

Rejection of amendment of memorandum. hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court, or be amended then and there.

When the Court rejects under this section any memorandum, it shall record the reasons for such rejection.

When a memorandum of appeal is amended under this section, the Judge, or such officer as he appoints in this behalf, shall attest the amendment by his signature.

544. Where there are more plaintiffs or more defendants than one in

One of several plaintiffs or defendants may obtain reversal of whole decree if it proceed on ground common to all. a suit, and the decree appealed against proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal against the whole decree, and thereupon the Appellate Court may reverse or modify the decree in favour of all the plaintiffs or defendants, as the case may be.

THE Court of Appeal has power under Act VIII. of 1859, s. 337 (corresponding with Act X. of 1877, s. 544), to draw up what would be a fair decree as regards all the parties to a suit, although some of them may not have appealed.—*Joykisto Cowar v. Nittyanund Nundy*, I. L. R., 3 Cal. 738. [May 8, 1878.] But see 2 P. C. B. 766 (*Mussamat Mul-leeka v. Mussamat Jumela*, 11 B. L. R. 375; I. L. R. I. A. Sup. 135). [Dec. 21, 1872.]

S having mortgaged land to K as security for a debt, sold it to V, who undertook to pay the debt. K alleging that C had undertaken either to make V pay the debt or to execute a mortgage of his own land to secure its repayment, and that V had dispossessed him, sued S, V, and C to recover the debt by sale of the land mortgaged, mesne-profits from V, and costs from S, V, and C. The District Munsif decreed payment against S; mesne-profits, and, in default of payment by S, a sale of the land against V; and costs against S, V, and C. V and C appealed against this decree. The Subordinate Judge found that the debt had been paid, and held that, even if the debt had not been paid, K had no cause of action against V or S, but, if at all, against C, and dismissed the suit as against V. The Subordinate Judge also held that he had no jurisdiction to interfere with the decree against S, and saw no reason to interfere with the decree against C. S appealed against this decree. Held that, even if S was not entitled to appeal in order to have the decree against him set aside, the error of the Subordinate Judge could be corrected under s. 622 of the Code of Civil Procedure by a direction to exercise the discretionary power given by s. 544 of the said Code.—*Seshadri v. Krishnan*, I. L. R., 8 Mad. 192. [Nov. 17, 1884.]

*Of Staying and Executing Decrees under Appeal.***545.** Execution of a decree shall not be stayed by reason only of an

Execution of decree not stayed solely by reason of appeal.

appeal having been preferred against the decree; but the Appellate Court may, for sufficient cause, order the execution to be stayed:

If an application be made for stay of execution of an appealable decree

Stay of execution of appealable decree before time for appealing has expired.

before the expiry of the time allowed for appealing therefrom, the Court which passed the decree may, for sufficient cause, order the execution to be stayed:

Provided that no order shall be made under this section unless the Court making it is satisfied—

(a) that substantial loss may result to the party applying for stay of execution unless the order is made:

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

THE present applicant having taken out execution of a decree held by him, and the judgment-debtor having appealed to the District Court, the two opponents became sureties, under s. 338 of Act VIII. of 1859, that the judgment-debtor would "obey and fulfil all such orders and decrees as should be given against him in appeal," and, in default of his so doing, they bound themselves "to pay jointly and severally, at the order of the Court, all such sums as the Court should, to the extent of Rs. 812-8-0, adjudge." Held that the obligation of the sureties to fulfil the decree of the Appellate Court was not confined to the first decree of that Court, but extended to the final decree which it passed upon the case being remanded by the High Court in special appeal.—*Shivlál Khubchand v. Apáji Bhivráv*, I. L. R., 2 Bom. 654. [July 11, 1878.]

S. 283 does not constitute an exception to the procedure laid down by s. 545. Where property has been released from attachment under s. 280, and subsequently declared liable to attachment by a decree against which an appeal is pending, a sale of such property before the final result of the appeal is not illegal by virtue of the provisions of s. 283.—*Fathula v. Muniyappa*, I. L. R., 6 Mad. 98. [Oct. 13, 1882.]

THE Court which passed a certain decree ordered execution thereof to be stayed pending appeal, on the debtor's furnishing security to the amount of Rs. 70,000, under the provisions of s. 545 of the Code of Civil Procedure. The debtor objected to the amount of security required, and appealed to the High Court on that ground. The decree-holder contended that no appeal lay. Held that the order was appealable. Held also on the facts that the security required was excessive.—*Udeyadeta Deb v. Gregson*, I. L. R., 12 Cal. 624. [Feb. 16, 1886.]

S. 253 of the Civil Procedure Code contemplates a suit pending at the time security is given for performance of the decree, and does not apply to a case where the litigation in the Courts of first instance and of first appeal has ended, and no second appeal has been instituted in the High Court when security is given. The holder of a decree affirmed on appeal by the District Court took out execution to recover costs awarded. Costs were deposited by the judgment-debtor and paid to the decree-holder, and a surety gave a bond by which he undertook to refund the amount to the judgment-debtor in the event of the latter succeeding in appeal to the High Court and of the decree-holder failing to repay him. The judgment-debtor subsequently filed an appeal to the High Court, and was successful; and he then applied in the execution-department to recover the amount from the surety. Held that the Court executing the High Court's decree had no jurisdiction to execute it against the surety.—*Hardeo Das v. Zaman Khan*, I. L. R., 8 All. 639. [Aug. 3, 1886.]

546. If an order is made for the execution of a decree against which

Security in case of order for execution of decree appealed against.

an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be given for the restitution of any property which may be taken in execution of the decree,

or for the payment of the value of such property, and for the due performance of the decree or order of the Appellate Court,

or the Appellate Court may, for like cause, direct the Court which passed the decree to take such security.

And when an order has been passed for the sale of immoveable property in execution of a decree for money, and an appeal is pending against such decree, the sale shall, on the application of the judgment-debtor, be stayed until the appeal is disposed of, on such terms as to giving security or otherwise as the Court which passed the decree thinks fit.

WHERE an order, requiring the decree-holder to give security within three days is made under s. 546 by the Judge of the Court in which the decree was passed, and in which the execution is pending, such order is appealable as a decree under the provisions of s. 2, and s. 244, cl. c.—*Luchmeeput Singh v. Sitanath Doss*, I. L. R., 8 Cal. 477. [Mar. 8, 1882.]

S. 253 of the Civil Procedure Code contemplates a suit pending at the time security is given for performance of the decree, and does not apply to a case where the litigation in the Courts of first instance and of first appeal has ended, and no second appeal has been instituted in the High Court when security is given. The holder of a decree affirmed on appeal by the District Court took out execution to recover costs awarded. Costs were deposited by the judgment-debtor and paid to the decree-holder, and a surety gave a bond by which he undertook to refund the amount to the judgment-debtor in the event of the latter succeeding in appeal to the High Court and of the decree-holder failing to repay him. The judgment-debtor subsequently filed an appeal to the High Court, and was successful: and he then applied in the execution-department to recover the amount from the surety. *Held* that the Court executing the High Court's decree, had no jurisdiction to execute it against the surety.—*Hardeo Das v. Zaman Khan*, I. L. R., 8 All. 639. [Aug. 3, 1886.]

547. No such security as is mentioned in sections 545 and 546 shall

No such security to be required from Government or public officer. be required from the Secretary of State for India in Council, or (when Government has undertaken the defence of the suit) from any public officer sued in respect of an act alleged to be done by him in his official capacity.

Of Procedure in Appeal from Decrees.

548. When a memorandum of appeal is admitted, the Appellate

Registry of memorandum of appeal. Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Register of Appeals. Such book shall be called the Register of Appeals.

549. The Appellate Court may, at its discretion, either before the re-

Appellate Court may require appellant to give security for costs. spondent is called upon to appear and answer, or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both:

Provided that the Court shall demand such security, in all cases in which

When appellant resides out of British India. the appellant is residing out of British India, and is not possessed of any sufficient immoveable property within British India independent of the property (if any) to which the appeal relates.

If such security be not furnished within such time as the Court orders, the Court shall reject the appeal.

S. 549 of the Civil Procedure Code applies to all appeals, including appeals *in forma pauperis*.—*Seshayyagár v. Jain-ul-avaadin*, 4 Ind. Jur. 507.

WHERE the Appellate Court demands from an appellant security for costs, the Court may extend the time within which it orders such security to be furnished: but if no application is made for such extension of time, and such security is not paid within the time entered, it is imperative on the Court, under Act X. of 1877, s. 549, to reject the appeal.—*Haidri Bai v. East India Railway Company*, I. L. R., 1 All. 687. [June 27, 1878.]

A SUITOR *in forma pauperis* may be called on to give security for costs under s. 549 of the Civil Procedure Code, but very special grounds must be shown to support such an application.—*Nusseruddeen Biswas v. Ujjal Biswas* (17 Suth. W.R. 68) dissented from.—*Seshayyangar and another v. Jainulavadin and another*, I. L. R., 3 Mad. 66. [April 21, 1880.]

S. 549 of the Civil Procedure Code contemplates an order by which some ascertained amount of security is required. The last paragraph of the section seems to contemplate that, on failure to furnish security within the time fixed, an order for rejecting the appeal should be obtained from the Court that gave the order to furnish security. Upon the application of the respondent in a second appeal pending before the High Court, an order was passed requiring the appellant to furnish security for the costs of the appeal, and to lodge such security at any time before the hearing. This order purported to be made under s. 549 of the Civil Procedure Code, but neither the application nor the order stated the amount of the security required. At the hearing of the appeal, no security having been lodged, the respondent objected that, with reference to the terms of s. 549, the Court had no option but to dismiss the appeal. Held that the objection had no force, no such order as was contemplated by s. 549 having been made. Held also that the proper course was to have applied to the Judge who passed the order for security, at any time before the case came on for hearing for the rejection of the appeal, and that it was too late at the hearing to ask the Court to reject the appeal.—*Thakur Das v. Kishori Lal*, I. L. R., 9 All. 164. [Dec. 16, 1884.]

THE proper construction of s. 549 of the Civil Procedure Code is that, where an appellant has been ordered to furnish security within a certain time, and that order has not been complied with, and no application has been made to extend the time within the period allowed, the Court is bound to reject the appeal.—*Budri Narain v. Sheo Koer*, I. L. R., 11 Cal. 716. [June 2, 1885.]

HELD by the Full Bench (Tyrrell, J., *dubitante*), without laying down any general rule by which the exercise of the discretion conferred by s. 549 of the Civil Procedure Code should be governed, that the mere fact of the poverty of an appellant, standing by itself, and without reference to any general facts of the case under appeal, ought not to be considered sufficient alone to warrant his being required to furnish security for costs.—*Jiwas Ali Beg v. Basa Mal*, I. L. R., 8 All. 203. [Feb. 13, 1886.]

AN appeal, although it may have been rejected by the Appellate Court under s. 549 of the Code of Civil Procedure, upon failure by the appellant to furnish security demanded under that section, may be restored, on sufficient grounds, at the Court's discretion. The High Court having apparently treated an appeal as though, after rejection of it under the above section, a petition tendering security to the amount demanded, and asking restoration of the appeal, was not entertainable, and could not be considered, held by the Judicial Committee that restoration was within the Court's discretion, and that there were grounds for it, upon the appellant's giving approved security within such time as the Court might fix.—*Balwant Singh v. Daulat Singh*, I. L. R., 8 All. 315. [Feb. 17, 1886.]

Appellate Court to give notice to Court whose decree appealed against.

550. When the memorandum of appeal is registered, the Appellate Court shall send notice of the appeal to the Court against whose decree the appeal is made.

If the appeal be from a Court the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send, with all practicable despatch, all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

Transmission of papers to Appellate Court.

Either party may apply in writing to the Court against whose decree the appeal is made, specifying any of such papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of the applicant, and shall be deposited accordingly.

Copies of exhibits in Court whose decree appealed against.

551. The Appellate Court may, if he thinks fit, after fixing a time for hearing the appellant or his pleader, and hearing him accordingly if he appears at such time, confirm the decision of the Court against whose decree the appeal is made, without sending notice of the appeal to such Court, and without serving notice on the respondent or his pleader; but in such case the confirmation shall be notified to the same Court.

Power to confirm decision of lower Court without sending it notice.

THE plaintiff sued to recover possession of certain immoveable property sold to him by the first defendant, a Hindu widow. The second defendant answered that his father and the first defendant's husband were undivided brothers, and that, as a childless widow, she has no right to sell the property. Both the lower Courts upheld the sale as absolute, on the ground that she was competent to make it as widow of a separate Hindu. The District Judge heard the appeal *ex parte* under Act X. of 1877, s. 551. *Held* that the decrees of the lower Courts were unsustainable, as they did not contain the limitation pointed out above; and remanded the case for the trial of the issue whether there were any such special circumstances as would justify the absolute sale by the first defendant to the plaintiff; and that the District Judge ought not to have disposed of the appeal *ex parte* under Act X. of 1877, s. 551.—*Gurunáth Nilkanth v. Krishnáji Govind*, I. L. R., 4 Bom. 462. [Feb. 16, 1880.]

ON an appeal from a decision, in a civil suit, of the Assistant Commissioner of Ajmere to the Commissioner of Ajmere, the latter, feeling doubtful on a question of the nature specified in s. 17 of the Ajmere Court's Reg. I. of 1877, referred such question, under s. 36 of that Regulation, to the Chief Commissioner of Ajmere and Mairwara. The Chief Commissioner dealt with the case as prescribed in s. 37 of that Regulation, and returned it to the Commissioner, who dismissed the suit in accordance with the Chief Commissioner's judgment. The plaintiff preferred an appeal to the Chief Commissioner from the Commissioner's decision. The Chief Commissioner did not make any order on the memorandum of appeal admitting it, or directing that it should be registered, or that the respondent should be summoned, or that the appellant should appear on a certain day under s. 551, Act X. of 1877, but issued a notice to the appellant's counsel to appear on a certain day. The appellant's counsel appeared on that day, and the Chief Commissioner intimated that he was acting under Act X. of 1877, s. 551. The appellant's counsel then proceeded to address the Chief Commissioner, and was heard for some time, and then stopped, in consequence of the Chief Commissioner resolving to refer to the High Court the question whether the appeal from the Commissioner's decision lay to him or to Her Majesty in Council. The Chief Commissioner subsequently referred such a question to the High Court. *Held* by the Full Bench, on a reference by a Division Bench before which the Chief Commissioner's reference came, that such question arose "in the trial of an appeal" within the meaning of the Ajmere Court's Reg. I. of 1877, s. 21, and was properly referred to the High Court. *Held* by the Division Bench that the appeal from the Commissioner's decision lay, in this particular case, not to the Chief Commissioner, but to her Majesty in Council.—*Thakur of Masuda v. Widows of the Thakur of Nandwara*, I. L. R., 2 All. 819 (F. B.). [April 5, 1880.]

THE order of adjudication made under s. 551 of the Civil Procedure Code is a decree, and the procedure authorized under that section does not dispense with the necessity of drawing up a judgment.—*Royal Reddi v. Linga Reddi*, I. L. R., 3 Mad. 1. [Feb. 23, 1881.]

552. The Appellate Court, unless where it confirms, under section 551, the decision of the lower Court, shall fix a day for hearing the appeal.

Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

553. Notice of the day so fixed shall be stuck up in the appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court against whose decree the appeal is made, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided in

Publication and service of notice of day for hearing appeal.

Chapter VI. for the service on a defendant of a summons to appear and answer; and all rules applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Instead of sending the notice to the Court against whose decree the Appellate Court may itself appeal is made, the Appellate Court may itself cause notice to be served. • • • cause the notice to be served on the respondent or his pleader under the rules above referred to.

554. The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard *ex parte*.
 Contents of notice. • • •

Procedure on Hearing.

555. On the day so fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

556. If, on the day so fixed, or any other day to which the hearing may be adjourned, the appellant does not attend in person or by his pleader, the appeal shall be dismissed for default.

Hearing appeal *ex parte*

If the appellant attends, and the respondent does not attend, the appeal shall be heard *ex parte* in his absence.

WHERE a suit has been instituted under Act VIII. of 1859, but decided at a time when Act X. of 1877 had come into operation, and an appeal is presented against such decision, s. 3 of the latter Act distinctly indicates that such an appeal is to be governed by the law of procedure in force at the date of the presentation of the appeal. Where, therefore, an appeal, presented when Act X. of 1877 was in force, has been dismissed under s. 556 of that Act, the appellant may apply for its re-admission under s. 558; and if such re-admission is refused, he is entitled to an appeal under s. 558.—*Elahee Buksh v. Marachow*, I. L. R., 4 Cal. 825. [Feb. 19, 1879.]

WHEN an appeal is dismissed, under Act X. of 1877, s. 556, for the appellant's default, the order dismissing it is not appealable.—*Ahmad Buksh v. Gobindi*, I. L. R., 2 All. 216. [Mar. 27, 1879.]

AN order under s. 556 of Act X. of 1877, dismissing an appeal for the appellant's default, is not a "decree" within the meaning of s. 2, and is not appealable.—*Mukhi v. Fakir*, I. L. R., 3 All. 382. [Dec. 22, 1880.]

AN Appellate Court, the appellant not attending in person or by his pleader, instead of dismissing the appeal for default, as provided by s. 556 of Act X. of 1877, proceeded, in contravention of the provisions of that law, to dispose of the appeal on its merits, and dismissed it. The appellant preferred a second appeal to the High Court, contending that the Appellate Court had acted contrary to law. Held that the Appellate Court had so acted, and its decision could only be treated as a dismissal for default, and that, so treating it, the proper and only course open to the appellant was to have applied under s. 558 for the re-admission of his appeal, and under these circumstances the second appeal would not lie. *Nand Ram v. Muhammad Baksh* (I. L. R., 2 All. 616) followed.—*Kanahi Lal and others v. Nautat Rai*, I. L. R., 3 All. 519. [Feb. 10, 1881.]

WHERE, when an appeal is called on, the pleader is not absent, but is unprepared to go on with the case, the dismissal is a dismissal for default within s. 556 of Act XIV. of 1882, and the appeal can therefore be re-admitted under s. 558. *Buldeo Misser v. Ahmed Hossein* (15 W. R. 143) followed.—*Shibendra Narain Chowdhuri v. Kinoo Ram Dass*, I. L. R., 12 Cal. 605. [Jan. 19, 1886.]

IN an appeal before an Appellate Court, the appellant did not attend in person or by pleader, and the Court, instead of dismissing the appeal for default, tried and dismissed it upon the merits. Subsequently, the appellant applied to the Court, under s. 558 of the Civil Procedure Code, to re-admit the appeal, explaining her absence when the appeal was

called on for hearing. The Court rejected the application, on the ground that the appeal had been decided on the merits, and reasons had been recorded for its dismissal which there were no apparent grounds for setting aside. *Held* that the Court should have dismissed the appeal for default, and it was illegal to try it on the merits, and the judgment was consequently a nullity, the existence of which was no bar to the re-admission of the appeal.—*Zainab Begam v. Mauawar Husain Khan*, I. L. R., 8 All. 277. [April 27, 1886.]

557. If, on the day so fixed, or any other day, to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed by the Court, the sum required to defray the costs of issuing the notice, the Court may order that the appeal be dismissed:

Dismissal of appeal where notice not served in consequence of appellant's failure to deposit cost.

Provided that no such order shall be passed, although the notice has not been served upon the respondent, if on the day fixed for hearing the appeal the respondent appears in person, or by a pleader, or by a duly authorized agent.

558. If an appeal be dismissed under section 556 or section 557, the appellant may apply to the Appellate Court for the re-admission of the appeal; and if it be proved that he was prevented by any sufficient cause from attending when the appeal was called on for hearing or from depositing the sum so required, the Court may re-admit the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

Re-admission of appeal dismissed for default.

WHERE a suit has been instituted under Act VIII. of 1859, but decided at a time when Act X. of 1877 had come into operation, and an appeal is presented against such decision, s. 3 of the latter Act distinctly indicates that such an appeal is to be governed by the law of procedure in force at the date of the presentation of the appeal. Where, therefore, an appeal, presented when Act X. of 1877 was in force, has been dismissed under s. 556 of that Act, the appellant may apply for its re-admission under s. 558; and if such re-admission is refused, he is entitled to an appeal under s. 588.—*Elahi Buksh v. Marachow*, I. L. R., 4 Cal. 825. [Feb. 19, 1879.]

An order under s. 556 of Act X. of 1877, dismissing an appeal for the appellant's default, is not a "decree" within the meaning of s. 2, and is not appealable.—*Mukhi v. Fakir*, I. L. R., 3 All. 382. [Dec. 22, 1880.]

An Appellate Court, the appellant not attending in person or by his pleader, instead of dismissing the appeal for default, as provided by s. 556 of Act X. of 1877, proceeded, in contravention of the provision of that law, to dispose of the appeal on the merits, and dismissed it. The appellant preferred a second appeal in the High Court, contending that the Appellate Court had acted contrary to law. *Held* that the Appellate Court had so acted, and its decision could only be treated as a dismissal for default, and that, so treating it, the proper and only course open to the appellant was to have applied under s. 558 for the re-admission of his appeal, and under these circumstances the second appeal would not lie. *Nand Ram v. Muhammad Baksh* (I. L. R., 2 All. 616) followed.—*Kanahi Lal v. Naubat Rai*, I. L. R., 3 All. 519. [Feb. 10, 1881.]

On an application under s. 558 of the Code of Civil Procedure for the re-admission of an appeal which had been decided *ex parte* against the applicant, it appeared that he had been misled by reason of the appeal having been transferred from the file of one Court to another, no notice of the transfer having been given to him by the pleaders in the case. *Held* that, under the circumstances, the applicant was entitled to have the appeal re-admitted.—*Narain Singh v. Bherab Churun Panda and another*, 8 O. L. R. 350. [Mar. 3, 1881.]

WHERE, when an appeal is called on, the pleader is not absent, but is unprepared to go on with the case, the dismissal is a dismissal for default within s. 556 of Act XIV. of 1882, and the appeal can therefore be re-admitted under s. 558. *Buldeo Misser v. Ahmed Hossein* (15 W. R. 143) followed.—*Shibendra Narain Chowdhuri v. Kinoo Ram Dass*, I. L. R., 12 Cal. 605. [Jan. 19, 1886.]

IN an appeal before an Appellate Court, the appellant did not attend in person or by pleader, and the Court, instead of dismissing the appeal for default, tried and dismissed it upon the merits. Subsequently, the appellant applied to the Court, under s. 558 of the Civil Procedure Code, to re-admit the appeal, explaining her absence when the appeal was called on for hearing. The Court rejected the application, on the ground that the appeal had been decided on the merits, and reasons had been recorded for its dismissal which there were no apparent grounds for setting aside. *Held* that the Court should have dismissed the appeal for default, and it was illegal to try it on the merits, and the judgment was consequently a nullity, the existence of which was no bar to the re-admission of the appeal.—*Zainab Begam v. Manawar Husain Khan*, I. L. R., 8 All. 277. [April 27, 1886.]

559. If it appear to the Court at the hearing that any person who was a party to the suit in the Court against whose decree the appeal is made, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court, and direct that such person be made a respondent.

Power to adjourn hearing, and direct persons appearing interested to be made respondents.

THE discretionary power of directing a person to be made a respondent, conferred on the Appellate Court by s. 559 of the Civil Procedure Code, is not limited by any provision in the Limitation Act (XV. of 1877)—*Manickya Moyee v. Boroda Prosad Mookerjee*, I. L. R., 9 Cal. 355. [July 31, 1882.]

THE Court of first instance gave the plaintiff in a suit for money a decree against the defendant B, exempting the defendants A and H. B appealed, making the plaintiff the respondent to the appeal. The plaintiff did not appeal from the decree of the Court of first instance in respect of the exemption of A and H. The Appellate Court made A a respondent to the appeal under s. 559 of the Civil Procedure Code, and, exempting B, gave the plaintiff a decree against A. *Held* that, inasmuch as s. 559 does not empower an Appellate Court virtually to make an appeal for an appellant, who has refrained from availing himself of his privileges under the law, by introducing for him other respondents than those he has included in his petition of appeal, and it could not be said that A was "interested in the result of the appeal," as, having the unappealed decree of the Court of first instance behind him, his position was secure, the Appellate Court had improperly made A a respondent to the appeal, and given a decree against him.—*Atma Ram v. Balkisheer*, I. L. R., 5 All. 266. [Jan. 16, 1883.]

560. When an appeal is heard *ex parte* in the absence of the respondent, and judgment is given against him, he may apply to the Appellate Court to re-hear the appeal; and if he satisfies the Court that the notice was not duly served, or that he was prevented by sufficient cause from attending when the appeal was called on for hearing, the Court may re-hear the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

Re-hearing on application of respondent against whom *ex-parte* decree made.

A SECOND appeal does lie from an *ex-parte* judgment without requiring the appellant to resort to a re-hearing under s. 560. S. 119 of the old Code prohibited an appeal from an *ex-parte* judgment; but there is no corresponding section to it in the new Code. It is true that s. 560 enables a respondent to, move for a re-hearing when the appeal is heard *ex parte*, provided he can satisfactorily account for his omission to appear at the hearing; but this section is permissive, not mandatory. The new Code seems to leave it to the party concerned to decide whether he ought to seek a re-hearing or prefer a second appeal.—*Medalatha Kunhi Kanna Kurup*, 3 Ind. Jur. 167.

AN appeal was heard *ex parte* in the absence of the respondent (defendant), and the judgment was given against him. He applied to the Appellate Court to re-hear the appeal, and the Appellate Court refused to re-hear it. He then appealed, not from the order refusing to re-hear the appeal, but from the decree of the Appellate Court. *Held* that he was not debarred, by reason that he had not appealed from the order refusing to re-hear the appeal, from appealing from the decree of the Appellate Court.—*Ramdas v. Baij Nath*, I. L. R., 2 All. 567. [Dec. 16, 1879.]

AN applicant, presenting a petition for the re-hearing of an appeal decided *ex parte*, must, at the time of making such application, be prepared to satisfy the Court that the

notice of appeal was not duly served upon him, or that he was prevented by sufficient cause from attending when the appeal was called on for hearing.—*Anunda Shaha Biswas alias Nyomuddin Sha Biswas v. Kema Bebee*, I. L. R., 6 Cal. 548. [Dec. 10, 1880.]

WHEN an appeal has been heard *ex parte*, a re-hearing cannot be granted by the Court on an application under s. 560 of the Civil Procedure Code, except upon legal evidence produced by the respondent of the facts necessary to entitle him to such re-hearing.—*Mahommed Khan v. Dinomolee Dashya* and another, 8 C. L. R. 112. [Jan. 6, 1881.]

HELD by the Full Bench (Straight, Offg. C.J., and Tyrrell, J., expressing no opinion), that a respondent in whose absence the appeal has been heard *ex parte*, and against whom judgment has been given, may prefer a second appeal from the decree under the provisions of s. 582 of the Civil Procedure Code, and his remedy is not limited to an application under s. 560 to the Court which passed the decree to rehear the appeal. *Ramjas Baijnath* (I. L. R., 2 All. 567) approved. *Per* Oldfield, J.—There is a distinction between the case of a defendant in a Court of first instance and that of a respondent in an appellate Court not appearing with reference to ss. 108 and 560 of the Code. *Lal Singh v. Kunjan* (I. L. R., 4 All. 387) and *Ramshet Bachaset v. Balkishna Ababhat* (6 Bom. H. C. R. 161) referred to. *Per* Mahmood, J.—The distinction is one of detail merely and not of principle. *Lal Singh v. Kunjan* (I. L. R., 4 All. 387) dissented from. *Zain-ul-Ab-din Khan v. Ahmad Raza Khan* (I. L. R., 2 All. 67; L. R. 5 Ind. Ap. 233), *Jamait-un-nissa v. Luft-un-nissa* (I. L. R., 7 All. 606), *Aschauff-un-nissa v. Lehareaux* (I. L. R., 8 Cal. 272), *Luckhmidas Vithaldas v. Ebrahim Oosman* (I. L. R., 2 Bom. 644), *Anantharama v. Madhava Penikar* (I. L. R., 3 Mad. 264), and *Modalatha's Case* (I. L. R., 2 Mad. 75), referred to. Also *per* Mahmood, J.—Where two procedures or two remedies are provided by statute, one of them must not be taken as operating in derogation of the other.—*Ajudhia Prasad v. Balmukand*, I. L. R., 8 All. 354. [May 10, 1886.]

561. Any respondent, though he may not have appealed against any

Upon hearing, respondent may object to decree as if he had preferred separate appeal. part of the decree, may, upon the hearing, not only support the decree on any of the grounds decided against him in the Court below, but take any objection to the decree which he could have taken by way of appeal, provided he has filed a notice of such objection not less than seven days before the date fixed for the hearing of the appeal.

Such objection shall be in the form of a memorandum, and the provi-

Form of notice, and provisions applicable thereto. sions of section 541, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

THE notice of objections referred to in s. 561 of the Civil Procedure Code must be filed not less than seven days before the date fixed for the hearing in the summonses issued to the public.—*Deo Kishen v. Maheshar Sahai*, I. L. R., 4 All. 249. [Jan. 26, 1880.]

AN appeal having been filed on the 10th April 1879, and the date for hearing fixed for May 1879, a memorandum for objections under s. 524 of the Civil Procedure Code was filed by the respondent on the 18th September 1879, before the actual hearing which took place in July 1880. *Held* that the memorandum of objections under s. 561 of the Code of Civil Procedure as amended by s. 86 of Act XII. of 1879 ought to have been filed not less than seven days before the date fixed for hearing, and was therefore inadmissible. On an application for review, *held* (*per* Maclean, J., distinguishing the case of *Ratansi Hullanji* (I. L. R., 2 Bom. 334) that nothing having been done, and no proceeding having been commenced by the respondent up to 31st May 1879 under the Procedure Code as it existed prior to that date, the filing of the memorandum was governed by the present Code as amended, and therefore inadmissible. *Held* (*per* Mitter, J.,) that the appeal, having been filed before Act XII. of 1879 was passed, was a proceeding within the meaning of s. 6 of the General Clauses Act (I. of 1868), and that the new Act therefore did not affect the appeal.—*Ram Gobind Jugodeb v. Denobundhu Sri Ohundun Mohapatter*, 9 C. L. R. 281. [July 14, 1881.]

WHERE the time for filing objections under s. 561 of the Civil Procedure Code expired on a day when the Court was closed, and objections were filed on the day the Court re-opened, *held* that such objections were filed within time. On the 16th March 1874, L gave M a mortgage on certain land for Rs. 24,000 for a term of ten years, by which it was provided, *inter alia*, that the mortgagee should take the profits of the land in lieu of interest; that the mortgagee should grant a lease of the land to the mortgagor, the latter paying the former the profits of the land every harvest in lieu of interest; that, if the

mortgagor failed to pay the mortgagee the profits of the land by the end of any year, he should pay interest on the principal amount of the mortgage at the rate of 1 per cent. calculated from the date of the mortgage, and in such case the mortgagee should have no claim to the profits; and that, if the mortgagor failed to pay the mortgagee the profits by the end of any year, the mortgagee should be at liberty to cancel the lease, and to enter on the land, and collect the rents thereof, and apply the same to payment of interest. On the 21st March 1874, M gave L a lease of the land, under which Rs. 1,980 was the sum agreed to be payable annually as profits in lieu of interest. In 1879, M, who had not been paid any profits, sought to enforce in the Revenue Courts the condition as to entry on the land, but was successfully resisted by L's widow. On the 16th January 1880, M sued L's widow for interest on the principal amount of the mortgage at the rate of one per cent. calculated from the date of the mortgage to the date of the suit, claiming the same by virtue of the provisions of the mortgage, on the ground that he had not been paid any profits. *Held* that the mortgage and lease-transactions must be regarded as one and indivisible, and the questions at issue between the parties be dealt with *quâ* mortgagor and mortgagee; that, so regarding such transactions, and dealing with such questions, M and L did not stand in the position of "landholder" and "tenant," and the proceedings of 1879 in the Revenue Courts were had without jurisdiction; also that, although, looking at the terms of the contract of mortgage, it was the intention of the parties that, on the mortgagor failing to pay the mortgagee the profits by the end of any year, the latter should, in the first place, seek possession of the land, yet as M had never obtained possession, but on the contrary had been resisted when he ought to obtain it, his present claim for interest was maintainable. The Court directed that so much of the interest as was due at L's death should be recoverable from such property of his as had come into his widow's hands; and as to the rest, which related to the period during which the widow had been in possession and in receipt of the profits, that it should be recoverable from her personally.—*Baghelin v. Mathura Prasad*, I. L. R., 4 All. 430. [April 1, 1882.]

THE plaintiff sued the defendants for compensation for the wrongful taking of the fruit on a tree which he alleged belonged to him. The defendants set up as a defence that the fruit on such tree had not been removed, and that such tree belonged to them. The Court of first instance dismissed the suit on the ground that the fruit on such tree had not been removed, but found incidentally that such tree belonged to the plaintiff. The plaintiff appealed from the decree of the Court of first instance; and the defendants objected to the decree, contending that such tree belonged to them. *Held* that, inasmuch as the Court of first instance did not, in deciding that such tree belonged to the plaintiff, decide a question substantially in issue, it did not decide in this matter "against the defendants" within the meaning of s. 561 of the Civil Procedure Code, and, as the decree was limited to dismissing the suit, the defendants as respondents were not qualified to take an objection which they could not have taken by way of appeal, and therefore the Appellate Court was not warranted by law in entertaining the objection taken by the defendants.—*Balak Tewari v. Kausil Misr*, I. L. R., 4 All. 491. [June 15, 1882.]

A NOTICE of objection under s. 561 of the Code of Civil Procedure (Act XIV. of 1882) must be filed not less than seven days before the date (if any) fixed for the hearing of the appeal in the notice served upon the respondent. S. 5 of Act XV. of 1877 does not apply to an objection under s. 561 of the Procedure Code.—*Kally Prosunno Biswas v. Mungala Dassee*, I. L. R., 9 Cal. 631. [Feb. 1, 1883.]

A OBTAINED a decree for possession of land against B and for costs against B, C, D, and others, defendants in the suit. C and other defendants appealed against this decree so far as it awarded costs against them, making A and D respondents to the appeal. Under s. 561 D objected to that part of the decree which awarded possession of the land to A. *Held* on appeal that it was open to D, although improperly made a party to the appeal by C against A, to take objection to the rest of the decree.—*Timmaya v. Lakshmy*, I. L. R., 7 Mad. 215. [Nov. 12, 1883.]

THE Court of first instance found for the defendants on the merits, and passed a decree in their favour without costs. The defendants appealed against that part of the decree which disallowed them their costs. The plaintiff filed a notice of objections to the decree on the merits as required by s. 561 of the Code of Civil Procedure (Act XIV. of 1882). The lower Court of Appeal varied the decree by allowing the defendants their costs of suit, and held that the plaintiff was not entitled to file any objections. *Held* that the Court of Appeal was in error in holding that the plaintiff's objections could not be entertained. S. 561 of the Code gives the respondent the power of taking any objection to the decree at the hearing of an appeal which he could have taken by way of appeal, provided he has filed a notice of his objections not less than seven days before the date fixed for the hearing of the appeal; and this power is independent of whether an appeal

lies on a mere question of costs. *Held* also that a finding, unaccompanied by the reasons for it, as required by s. 204 of the Code, is not a conclusive finding of fact binding on a Court of second appeal.—*Kāmat v. Kāmat*, I. L. R., 8 Bom. 368. [May 24, 1884.]

An appellant finding, after the hearing had commenced, that his appeal was hopeless, claimed the right of withdrawing the appeal, in order to prevent the objections filed, under s. 561 of the Civil Procedure Code (Act XIV. of 1882), by the respondent against the decree from being heard. *Held* that, after the hearing of an appeal has commenced, the Appeal Court is seized of the respondent's objections, and that the appeal cannot be withdrawn so as to prevent the objections from being heard and determined.—*Dhondi Jagannāth v. Collector of Salt Revenue*, I. L. R., 9 Bom. 28. [June 27, 1884.]

OBJECTIONS to a decree under s. 561 of the Civil Procedure Code (Act XIV. of 1882) need not necessarily be filed seven days before the day originally fixed for hearing the appeal. When the hearing is postponed, it is sufficient if the objections are filed seven days before the day fixed for the postponed hearing, the object of s. 561 being merely to give the appellant timely intimation of proposed objections.—*Rangildās v. Rāi Girja*, I. L. R., 8 Bom. 559. [July 14, 1884.]

WHERE an appeal was dismissed upon the application of the appellant himself, made before the hearing, *held* that the respondents, who had filed objections to the decree of the Court of first instance under s. 561 of the Civil Procedure Code, had no claim to have their objections heard, notwithstanding the dismissal of the appeal. *Coomar Puresh Narain Roy v. Watson and Co.* (23 W. R. 229) and *Dhondi Jagannāth v. Collector of Salt Revenue* (I. L. R., 9 Bom. 28) referred to.—*Maktab Beg v. Hasan Ali*, I. L. R., 8 All. 551. [July 22, 1886.]

562. If the Court against whose decree the appeal is made has dis-

posed of the suit upon a preliminary point so as to remand of case by Appellate Court. exclude any evidence of fact which appears to the Appellate Court essential to the determination of the rights of the parties, and the decree upon such preliminary point is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, together with a copy of the order in appeal, to the Court against whose decree the appeal is made, with directions to re-admit the suit under its original number in the register, and proceed to investigate the suit on the merits.

The Appellate Court may, if it thinks fit, direct what issue or issues shall be tried in any case so remanded.

UPON an appeal, under s. 558 cl. (v) of the Civil Procedure Code, from an order of an Appellate Court under s. 562, remanding a case which has been disposed of upon a preliminary point in the Court of first instance, the High Court may enter into the merits of the adjudication by the Court of first instance on the preliminary point, and may, if it finds the order of the lower Appellate Court defective, allow the party, who had the benefit of a decree in the first Court, to retain that benefit. The purchaser of the rights and interests of a judgment-debtor who is a member of a joint family, at a sale in execution of a decree, does not acquire any title to the rights and interests of the other members of the family, unless it is clear that the judgment-debtor was sued in a representative capacity. *Muddan Thakur v. Kantoo Lall* (I. L. R., 2 Cal. 379) distinguished.—*Loki Mahto v. Aghoree Ajai Lall*, I. L. R., 5 Cal. 144. [May 8, 1879.]

By the amendment of the plaint a suit for the restoration of a pond, which it was alleged the defendants were wrongfully filling up, to its original condition, was altered into one for the protection of the plaintiffs from any infringement of, or for a declaration of, their rights to a share in the produce, and the use of the water, by way of easement. *Held* that the alteration in the plaint was a material one; and that an Appellate Court is not empowered by Act X. of 1877 to order or allow a plaint to be amended, or to remand a case under s. 562 of that Act for the purpose of such amendment.—*Fazand Ali v. Yusuf Ali*, I. L. R., 2 All. 689. [Feb. 5, 1880.]

As the Limitation Act (XV. of 1877) shortens the period of limitation in the case of promissory notes payable on demand, the period of limitation in respect of such notes executed prior to 1st October 1877 is governed by the provisions of s. 2 of the Act. When a Court of first instance, after taking evidence, dismisses a suit upon a preliminary objection without giving a decision upon the merits of the case, and the decree is reversed on appeal, the Court of Appeal, if it considers the evidence on record sufficient, may decide the case, and is not bound to remand it for trial under s. 562 of the Civil Procedure Code.—*Bandi Subbayya v. Madalapalli Subanna*, I. L. R., 3 Mad. 96. [Dec. 15, 1880.]

AN appeal from an order on appeal remanding a suit for re-trial is not to be confined to the question whether the remand has been made contrary to the provisions of s. 562 of Act X. of 1877 or not; but the question whether the decision of the Appellate Court on the preliminary point is correct or not may also be raised and determined in such an appeal.—*Badam v. Imrat*, I. L. R., 3 All. 675. [April 4, 1881.]

A COURT of first instance dismissed a suit upon a preliminary point. On appeal by the plaintiff against the decree of such Court the then Judge of the Appellate Court, Mr. B, reversed the decree upon such preliminary point, and remanded the suit under s. 562 of Act X. of 1877 for the trial of a certain issue. The Court of first instance tried such issue, and made a decree in accordance with its finding thereon. On appeal against the decree of the Court of first instance the defendant again raised such preliminary point. The then Judge of the Appellate Court, Mr. K, dismissed the suit upon such preliminary point. Held that, as, although Mr. B had irregularly remanded the suit under s. 562 of Act X. of 1877, his decision disposed of such preliminary point, and only left open for trial the issue which he had directed to be tried, Mr. K was not competent to re-try and decide such preliminary point.—*Suraj Din v. Chattar*, I. L. R., 3 All. 755. [April 19, 1881.]

THE Court of first instance made an order returning the plaint in a suit to be presented to the proper Court, on the ground that it was not competent to try such suit. On appeal from such order the Appellate Court, holding that the Court of first instance was competent to try such suit, made an order "decreeing the appeal." It subsequently made an additional order directing that the case "should be returned for re-trial." On appeal to the High Court from such additional order, held that the appeal would not lie, as it was in reality one from an order passed in appeal from an order returning a plaint, which, under the last clause of s. 589 of Act X. of 1877, was final, and not an appeal from an order remanding a case under s. 562, the character of the original order of the Appellate Court not being altered by the passing of the additional order.—*Kishna Ram v. Narsiugh Sevak Singh*, I. L. R., 3 All. 855. [June 20, 1881.]

ON an appeal from an order under s. 562 of the Civil Procedure Code remanding the case, the High Court cannot consider the facts on which the lower Appellate Court passed the order of remand. All that it can do under s. 588, cl. 28, is to consider whether, on the findings of fact by the lower Appellate Court, that Court was right in remanding the case.—*Noimollah Pramanick v. Grish Narain Moonshee*, I. L. R., 8 Cal. 674. [Jan. 26, 1882.]

AN Appellate Court has no power to remand a case except under the provisions of s. 562 of the Code of Civil Procedure.—*Mudun Mohun Poddar v. Bhoggomanto Poddar*, I. L. R., 8 Cal. 923. [April 13, 1882.]

S. 26 of the Code of Civil Procedure does not authorize the joinder of plaintiffs with antagonistic claims arising out of distinct causes of action. Where one of two widows of a deceased Hindu and her adopted son sued as co-plaintiffs, claiming in the alternative either to recover the whole family-estate for the latter, if the adoption was valid, or, if the adoption was invalid, one-half of the estate for the former, held that the suit was bad for misjoinder. Held also that when such misjoinder had been allowed, and the suit decided, and an appeal brought, the Court of Appeal should dispose of the suit in the mode in which the lower Court ought to have disposed of it, by returning the plaint for amendment. *Farzand Ali v. Yusuf Ali* (I. L. R., 2 All. 669) dissented from.—*Lingammal v. Venkammal*, I. L. R., 6 Mad. 239. [Dec. 22, 1882.]

THE right of appeal given by ss. 588 and 589 of Act X. of 1877 from an order of remand, as contemplated by s. 562, is not taken away by s. 586. *Chaudhri Ranjit Singh v. Jafar Ali Khan* (I. L. R., 3 All. 18) followed.—*Mahadev Narsingh v. Ragho Keshav*, I. L. R., 7 Bom. 292. [April 19, 1883.]

A COURT in the exercise of appellate jurisdiction passed an order under s. 562 of the Civil Procedure Code, remanding a case of the Small Cause Court class as described in s. 586. Held that, under the express words of the second portion of s. 589 of the Code, an appeal does lie to the High Court from such an order.—*K'rite Mohaldar v. Ramjan Mohaldar*, I. L. R., 10 Cal. 523. [Mar. 6, 1884.]

WHERE a lower Appellate Court, instead of remanding a suit under s. 566 of the Civil Procedure Code, erroneously remands it under s. 562, and the party aggrieved by its order appeals to the High Court, under cl. 28, s. 588, the High Court cannot deal with the case as if it were a first appeal from a decree. All that the High Court can do is to rectify the procedure of the lower Appellate Court and to direct that it decide the case, itself on the merits. *Badam v. Imrat* (I. L. R., 3 All. 675) distinguished. *Ramnarain v. Bhanidin* (2 Weekly Notes, 1882, p. 104) and *Shocamber Singh v. Lallu Singh* (Weekly Notes, 1882, p. 158) referred to.—*Sohan Lal v. Aziz-un-nissa Begam*, I. L. R., 7 All. 136. [Nov. 4, 1884.]

IN a case where neither of the parties desired to have a local investigation, though suggested by the Court, the lower Court dealt with the case on the materials before it, and made a decree. On appeal the Appellate Court remanded the case for the purpose of a local investigation being held at the cost, in the first instance, of the plaintiff. The lower Court thereupon made an order that the plaintiff should deposit the costs of the local investigation, and on default being made by the plaintiff, it dismissed the suit. The order of remand was found to be invalid as made without jurisdiction. Held that all proceedings taken by the Court of first instance, after the remand, and pending the hearing of the appeal against the remand order, were null and void, inasmuch as the jurisdiction of that Court to hear the case upon remand depended upon the validity of the remand order. An appeal, therefore, lay from the order of remand, notwithstanding the Court of first instance had subsequently made what purported to be a final decree in the case.—*Jatins Valley Tea Company v. Cifera Tea Company*, I. L. R., 12 Cal. 45, [June 19, 1885.]

IN a suit for pre-emption, based on the *wajib-ul-arz* of a village, the Court of first instance dismissed the claim on the ground that no right of pre-emption had been proved to exist in the village. The lower Appellate Court, dissenting from this opinion, reversed the first Court's decree, and sent down the case under s. 562 of the Civil Procedure Code for a decision on the remaining question of fact, *viz.*, the amount of the consideration for the sale. In appeal from the order of remand, the High Court, on the 3rd January 1884, observed that it was not disposed to interfere with the finding of fact that the plaintiff had a right of pre-emption, and accordingly dismissed the appeal, but added that the Judge was in error in remanding the case under s. 562 of the Code; that his order must so far be set aside; and that he should proceed under s. 565 or s. 566 as might be applicable. The Judge, on receipt of this order, replaced the case on his file, remitted an issue to the Court of first instance under s. 566 as to the amount of consideration, and, accepting the first Court's finding upon that issue, decreed the plaintiff's claim. In second appeal by the defendants the High Court was of opinion that the Judge had disposed of the case upon a condition of things which the plaintiffs had never asserted, inasmuch as he had treated the right of pre-emption which was in issue as one arising from custom, and not, as alleged by the plaintiffs, as arising from a contract between the ancestors of the parties. All the evidence necessary to the determination of the case was on the record. Held, by the Full Bench, that the defendants were not prevented by the operation of the High Court's order of the 3rd January 1884 from disputing the right of pre-emption, inasmuch as that order was a decision of a merely interlocutory character passed in the same suit, and the questions of fact involved therein were decided only so far as was necessary for the purpose of passing the order, and it could not be regarded as determining the main question in the suit, which was still open, and must be decided in the final decree in the suit. *Per* Straight, J., that the jurisdiction of the High Court in appeal under s. 588 of the Code from the Judge's order of remand was, like the jurisdiction of the Judge in passing the order, limited by the terms of s. 562; and hence the remark made in the High Court's order dealing with the plaintiffs' right of pre-emption could only be regarded as an *obiter dictum*, and not as determining any question as to the pre-emptive right. Held *per* Petheram, C.J., and Oldfield and Tyrrell, J.J., that the High Court was competent, in second appeal from the Judge's decree, to look into the evidence already on the record for the purpose of finding whether a right of pre-emption existed, in fact, in the village, if the evidence for answering this question was already on the record, and that, in such a case, the question need not be referred to the Court of first appeal. *Bal Kishen v. Jasoda Kuar* (I. L. R., 7 All. 765) referred to. *Per* Straight and Boddurist, J.J., *contra*. *Bal Kishen v. Jasoda Kuar* (I. L. R., 7 All. 765) referred to.—*Deokishen v. Bansi*, I. L. R., 8 All. 172. [Jan. 22, 1886.]

WHERE a Court of first appeal remanded a case to the Court of first instance for the addition of all necessary parties, and at the same time decided an issue as to the merits, and it appeared that the Court of first instance had not disposed of the case "on a preliminary point, so as to exclude any evidence of fact which appeared to the Appellate Court essential to the determination of the rights of the parties," held, first, that, on an appeal from the order of remand, the decision on the merits, on which the order of remand was not based, was not before the High Court on appeal; and, further, that the order of remand was unsustainable under ss. 562 and 564 of the Civil Procedure Code (Act XIV. of 1882), which are strictly binding on all Courts of first appeal. The proper course for the lower Appellate Court would have been to join the parties whom it found to be necessary, and then to raise the proper issues as between the plaintiff and those parties, and, if necessary, to refer the issues to the Court of first instance for trial under s. 566.—*Ganesh Bhikaji Juvekar v. Bhikaji Krishna Juvekar*, I. L. R., 10 Bom. 398. [Feb. 10, 1886.]

A DISTRICT Munsif, having taken all the evidence offered on the issues in a suit, disposed of the suit upon his finding on one of the issues without deciding the rest. On

appeal the District Judge reversed the decree, and remanded the suit for the trial of the issues left untried. *Held* that, under s. 562 of the Code of Civil Procedure, the order of remand was illegal.—*Amma v. Kunhunni*, I. L. R., 9 Mad 355. [Mar. 17, 1886.]

563. When a case is remanded with directions to take any evidence so excluded, the Court to which the case is remanded shall not take any other evidence on the case, except evidence tendered to contradict the evidence so taken.

Limit to remand.

564. The Appellate Court shall not remand a case for a second decision, except as provided in section 562.

S. 26 of the Code of Civil Procedure does not authorize the joinder of plaintiffs with antagonistic claims arising out of distinct causes of action. Where one of two widows of a deceased Hindu and her adopted son sued as co-plaintiffs, claiming in the alternative either to recover the whole family-estate for the latter, if the adoption was valid, or, if the adoption was invalid, one-half of the estate for the former, *held* that the suit was bad for misjoinder. *Held* also that, when such misjoinder had been allowed, and the suit decided, and an appeal brought, the Court of Appeal should dispose of the suit in the mode in which the lower Court ought to have disposed of it, by returning the plaint for amendment. *Farzand Ali v. Yusuf Ali* (I. L. R., 2 All. 609) dissented from.—*Lingammál v. Venkatammál*, I. L. R., 6 Mad. 239. [Dec. 22, 1882.]

WHERE a lower Appellate Court, instead of remanding a suit under s. 566 of the Civil Procedure Code, erroneously remands it under s. 562, and the party aggrieved by its order appeals to the High Court under cl. 28, s. 588, the High Court cannot deal with the case as if it were a first appeal from a decree. All that the High Court can do is to rectify the procedure of the lower Appellate Court, and to direct that it decide the case itself on the merits. *Badam v. Imrat* (I. L. R., 3 All. 675) distinguished. *Ramnarain v. Bhanuvidin* (2 Weekly Notes, 1882, p. 104) and *Shebambar Singh v. Lallu Singh* (Weekly Notes, 1882, p. 158) referred to.—*Sohan Lal v. Aziz-un-nissa Begam*, I. L. R., 7 All. 136. [Nov. 4, 1884.]

WHERE a Court of first appeal remanded a case to the Court of first instance for the addition of all necessary parties, and at the same time decided an issue as to the merits, and it appeared that the Court of first instance had not disposed of the case "on a preliminary point, so as to exclude any evidence of fact which appeared to the Appellate Court essential to the determination of the rights of the parties," *held*, first, that, on an appeal from the order of remand, the decision on the merits, on which the order of remand was not based, was not before the High Court on appeal; and, further, that the order of remand was unsustainable under ss. 562 and 564 of the Civil Procedure Code (Act XIV. of 1882), which are strictly binding on all Courts of first appeal. The proper course for the lower Appellate Court would have been to join the parties whom it found to be necessary, and then to raise the proper issues as between the plaintiff and those parties, and, if necessary, to refer the issues to the Court of first instance for trial under s. 566.—*Ganesh Bhikáji Juvekar v. Bhikáji Krishna Juvekar*, I. L. R., 10 Bom. 398. [Feb. 10, 1886.]

AN order for the transfer of a suit from one Court to another, under s. 25 of the Code of Civil Procedure, cannot be made unless the suit has been brought in a Court having jurisdiction. The judgment in *Peary Lal Mozoomdar v. Kómal Kishore Dasia* (I. L. R., 6 Cal. 30) entirely approved. When a suit has been tried by a Court having no jurisdiction over the matter, the parties cannot, by their mutual consent, convert the proceedings into a judicial process: although, when the merits have been submitted to a Court, it may result that, having themselves constituted it their arbiter, the parties may be bound by its decision. On the other hand, in a suit tried by a competent Court, the parties having without objection joined issue, and gone to trial upon the merits, cannot subsequently dispute the jurisdiction on the ground of irregularities in the initial procedure, which, if objected to at the time, would have led to the dismissal of the suit. A suit, having been instituted in a Court not of competent jurisdiction, was transferred, with the consent of parties, to a Court which was competent; but the defence of jurisdiction was set up before the issues were fixed, and was afterwards insisted on throughout. *Held* that in the single fact that the defendant had personally concurred in the transfer, there had been no waiver of the right to maintain in this defence, and that the suit must be dismissed on the ground that it was not competently brought. A Court of appeal, having set aside the whole of

the proceedings including the plaint, directed that a new plaint be presented in the proper Court. *Held* that this order, equivalent to directing the plaintiff to institute a new suit, was wrong; and that, with only the alternative of having leave to withdraw the suit and bring a new one, his suit should have been dismissed.—*Ledgard v. Bull*, I. L. R., 9 All. 191. [July 21, 1886.]

565. When the evidence upon the record is sufficient to enable the

Appellate Court to pronounce judgment, the Appellate Court shall, after re-setting the issues, if necessary, finally determine the case, notwithstanding that the judgment of the Court against whose decree the appeal is made, has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

WHERE a Court of first appeal omits to determine a material issue of fact, the High Court as a Court of second appeal is not competent, under s. 565 of the Civil Procedure Code, to determine such itself, but should refer it for determination to the Court of first appeal—*Sheo Ratan v. Lappu Kuar*, I. L. R., 5 All. 14. [July 19, 1882.]

HELD by the Full Bench (Tyrrell, J., dissenting), that the findings upon issues remanded by the High Court in second appeal cannot be challenged upon the evidence as in first appeals, but objections to these findings must be restricted to the limits within which the original pleas in second appeal are confined. *Nivath Singh v. Bhikki Singh* (I. L. R., 7 All. 649) referred to. *Per* Potheram, C.J., and Tyrrell, J. (Straight, J., dissenting).—Ss. 565 and 566 of the Civil Procedure Code are, as far as may be, incorporated in chap. 42 of the Code relating to second appeals, and when the evidence for disposing of the real issues in the case has been taken and exists on the record, it is the duty of the High Court, on the hearing of a second appeal, to itself fix and determine such issues on the evidence on the record, and not to put the parties to the expense and delay involved by a remand. *Per* Straight, J.—S. 587 of the Civil Procedure Code does not mean that the provisions of chap. 41 relating to first appeals are to be applied indiscriminately or in their entirety to second appeals, and implies no warrant for the decision by the High Court of questions of fact in any shape or at any stage of a second appeal. *Ramnarain v. Bhawanidin* (Weekly Notes, 1882, p. 104) and *Sheoambar Singh v. Lallu Singh* (Weekly Notes, 1882, p. 158) referred to. *Per* Tyrrell, J.—The jurisdiction of Courts of second appeal in respect of questions of fact is restricted, inasmuch as the appeal may not be entertained on “grounds” of fact; but, under the circumstances of s. 566 of the Code, no less than under the abnormal circumstances contemplated by the ruling of the Full Bench in *Nivath Singh v. Bhikki Singh* (I. L. R., 7 All. 649), the High Court may take cognizance of omitted issues of fact, and must determine them if there be evidence upon the record sufficient for that purpose. An issue to be tried in this way will, with all the evidence bearing upon it, be open to consideration from any point of view that may be present to the Court on the evidence and otherwise. In cases where the Court, still acting under s. 566, has been obliged, in the absence of evidence on the record, to supplement the defect through the agency of the Court below, its jurisdiction in respect of such evidence does not become limited thereby or by reason only of the circumstance that the evidence is accompanied by a “finding” of the inferior Court—the term “finding” being used in s. 566 in its restricted sense of an answer to the proposition referred for inquiry, and not of an award or decision of the issue before the Court.—*Balkishen v. Jasoda Kuar*, I. L. R., 7 All. 765. [June 4, 1885.]

AFTER the trial of issues raising the question whether the plaintiff was, or the defendants were, entitled to zemindari rights in certain mehals, a decree was made affirming the title of the plaintiff, the evidence in support of the defendants’ case being discredited, and the latter were declared by the decree to be the “plaintiff’s under-tenure holders of the said mehals.” This was modified on appeal by the declaration that “the defendants are putnidars of the same mauzas.” *Held* that it was unnecessary on this appeal to consider whether the Appellate Court was right in its conclusion that the defendants were putnidars; because, upon the case which had been set up for the defendants, and upon the issues framed and tried in the lower Court, the Appellate Court could not properly make such a declaration: the defendants could not be in a better position than they would have been in had they claimed to be putnidars, in which case an issue as to that title would have been framed and tried. S. 565 of Act X. of 1877 does not enable an Appellate Court to declare a right in favour of one of the parties, where no issue has been fixed on the point, and the right has not been set up in the lower Court. *Official Trustees of Bengal v. Krishna Chandra Mozumdar*, I. L. R., 12 Cal. 230. [June 27, 1885.]

IN a suit for pre-emption, based on the *wajib-ul-arz* of a village, the Court of first instance dismissed the claim on the ground that no right of pre-emption had been proved to exist in the village. The lower Appellate Court, dissenting from this opinion, reversed the first Court's decree, and remanded the case under s. 562 of the Civil Procedure Code for a decision on the remaining question of fact, *viz.*, the amount of the consideration for the sale. In appeal from the order of remand, the High Court, on the 3rd January 1881, observed that it was not disposed to interfere with the finding of fact that the plaintiff had a right of pre-emption, and accordingly dismissed the appeal, but added that the Judge was in error in remanding the case under s. 562 of the Code; that his order must so far be set aside; and that he should proceed under s. 565 or 566 as might be applicable. The Judge, on receipt of this order, replaced the case on his file, remitted an issue to the Court of first instance under s. 566 as to the amount of consideration, and, accepting the first Court's finding upon that issue, decreed the plaintiff's claim. In second appeal by the defendants the High Court was of opinion that the Judge had disposed of the case upon a condition of things which the plaintiffs had never asserted, inasmuch as he had treated the right of pre-emption which was in issue as one arising from custom, and not, as alleged by the plaintiffs, as arising from a contract between the ancestors of the parties. All the evidence necessary to the determination of the case was on the record. *Held*, by the Full Bench, that the defendants were not prevented by the operation of the High Court's order of the 3rd January 1881 from disputing the right of pre-emption, inasmuch as that order was a decision of a merely interlocutory character passed in the same suit, and the questions of fact involved therein were decided only so far as was necessary for the purpose of passing the order, and it could not be regarded as determining the main question in the suit, which was still open, and must be decided in the final decree in the suit. *Per* Straight, J., that the jurisdiction of the High Court in appeal under s. 588 of the Code from the Judge's order of remand was, like the jurisdiction of the Judge in passing the order, limited by the terms of s. 562; and hence the remark made in the High Court's order dealing with the plaintiffs' right of pre-emption could only be regarded as an *obiter dictum*, and not as determining any question as to the pre-emptive right. *Held* per Petheram, C.J., and Oldfield and Tyrrell, JJ., that the High Court was competent, in second appeal from the Judge's decree, to look into the evidence already on the record for the purpose of finding whether a right of pre-emption existed, in fact, in the village, if the evidence for answering this question was already on the record, and that, in such a case, the question need not be referred to the Court of first appeal. *Bal Kishen v. Jasoda Kuar* (I. L. R., 7 All. 765) referred to. *Per* Straight and Brodhurst, JJ., *contra*. *Bal Krishen v. Jasoda Kuar* (I. L. R., 7. All. 765) referred to.—*Deekishen v. Bansil*, I. L. R., 8 All. 172. [Jan. 22, 1886.]

A DISTRICT Munsif, having taken all the evidence offered on the issues in a suit, disposed of the suit upon his finding on one of the issues without deciding the rest. On appeal the District Judge reversed the decree and remanded the suit for the trial of the issues left untried. *Held* that, under s. 562 of the Code of Civil Procedure, the order of remand was illegal.—*Amma v. Kunhuani*, I. L. R., 9 Mad. 355. [Mar. 17, 1886.]

HELD by the Full Bench that s. 587 of the Civil Procedure Code does not make ss. 565 and 566 applicable to second appeals, so as to enable the High Court, in cases where the lower Appellate Court has omitted to frame or try any issue or to determine any essential question of fact, to itself determine the same upon the evidence on the record; but the High Court in such cases must remit issues for trial to the lower appellate Court. *Bal Kishen v. Jasoda Kuar* (I. L. R., 7 All. 765) and *Deekishen v. Bansil* (I. L. R., 8 All. 172) overruled on this point.—*Girdhari Lal v. Crawford* (W.), I. L. R., 9 All 147. [Dec. 10, 1886.]

566. If the Court against whose decree the appeal is made has omitted

When Appellate Court may frame issues, and refer them for trial to Court whose decree appealed against.

to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, and the evidence upon the record is not sufficient to enable the Appellate Court to determine such issues or question, the Appellate Court may frame issues for trial, and may refer the same for trial to the Court against whose decree the appeal is made, and in such case shall direct such Court to take the additional evidence required;

and such Court shall proceed to try such issues, and shall return to the Appellate Court its finding thereon, together with the evidence.

WHERE an Appellate Court, under Act VIII. of 1859, s. 354, refers to a lower Court issues for trial, and fixes a time within which, after the return of the finding, either party to the appeal may file a memorandum of objections to the same, neither party is entitled, without the leave of the Court, to take any objection to the finding, orally or otherwise, after the expiry of the period so fixed, without his having filed such memorandum.—*Ratan Singh v. Wagar*, I. L. R., 1 All. 165. [April 24, 1876.]

IN a suit for negligence, where it is possible that the Court may take one or more different views as to the proper measure of damages, the plaintiff must come prepared with evidence as to the amount of damages according to whichever view the Court may adopt: and if the evidence produced is applicable to one view only, the Court cannot give the plaintiff a retrial, and allow him to remodel his case with fresh evidence under Act X. of 1877, s. 566. That section is intended to provide for cases where some point has come to light in the Appellate Court, which has not been raised, or the importance of which has not occurred to the parties or to the Judge in the Court below.—*Anundo Lal v. Boycaunt Ram Roy*, I. L. R., 5 Cal. 283. [July 11, 1879.]

ASSUMING that an Appellate Court, in deciding a case in a manner inconsistent with, and opposed to, the finding returned to it by the Court of first instance under Act X. of 1877, s. 566, in the absence of objections, acted irregularly, its decree could not be reversed or the case remanded on account of such irregularity, such irregularity not affecting the merits of the case or the jurisdiction of the Court.—*Akbari Begam v. Wilayat Ali*, I. L. R., 2 All. 908. [May 31, 1880.]

As the Limitation Act (XV. of 1877) shortens the period of limitation in the case of promissory notes payable on demand, the period of limitation in respect of such notes executed prior to 1st October 1877 is governed by the provisions of s. 2 of the Act. When a Court of first instance, after taking evidence, dismisses a suit upon a preliminary objection without giving a decision upon the merits of the case, and the decree is reversed on appeal, the Court of Appeal, if it considers the evidence on record sufficient, may decide the case, and is not bound to remand it for trial under s. 562 of the Civil Procedure Code.—*Bandi Subbaya v. Madalarajalli Subanna*, I. L. R., 3 Mad. 96. [Dec. 15, 1880.]

H sued B for arrears of rent, alleging that the annual rent payable by the latter was Rs. 212-1-0. The Court of first instance gave H a decree based on the finding that the annual rent payable by B was Rs. 94. H appealed, and the lower Appellate Court gave him a decree based on the finding that the annual rent payable by B was Rs. 128-12-0. B appealed to the High Court from the lower Appellate Court's decree. H did not appeal from that decree, neither did he take any objections thereto under s. 561 of Act X. of 1877. *Stuart, C.J.*, and *Oldfield, J.*, before whom such appeal came on for hearing, remanded the case to the lower Appellate Court for a fresh determination of the question as to the amount of the annual rent payable by B. The lower Appellate Court then found that the annual rent payable by B was Rs. 212-1-0. *Held* by *Stuart, C.J.* (*Oldfield, J.*, dissenting), that such second finding of the lower Appellate Court should be accepted, and the amount awarded by its decree be enlarged accordingly, notwithstanding H had not appealed from that decree, or preferred objections thereto.—*Bikramjit Singh v. Husaini Begum*, I. L. R., 3 All. 643. [Mar. 18, 1881.]

THE plaintiff sued to recover from the defendant Rs. 71-3-3, alleging that the defendant had illegally levied the money on the plaintiff's land on account of enhanced summary settlement and local fund cess. The defendant, being a minor, was represented by the Collector as his administrator. The Assistant Judge who tried the suit awarded the plaintiff's claim. The District Judge in appeal reduced the amount of the plaintiff's claim to Rs. 38-4-9, but upheld the decree of the first Court in other respects. The defendant thereupon filed a second appeal in the High Court. *Held* that under the Civil Procedure Code (Act X. of 1877), s. 566, no second appeal lay, as the suit was one cognizable by a Small Cause Court. Act X. of 1876, s. 15, removes suits to which the Collector is a party from the jurisdiction of the Small Cause Court; but the nature of the suit remains unaltered.—*Musá Miyá Sahab v. Sayad Gulám Husein Mahamad*, I. L. R., 7 Bom. 100. [July 26, 1882.]

WHERE the lower Appellate Court omits to give reasons for its decision, the High Court will retain the case in second appeal, and either require the Judge to state his reasons, or, in the event of his absence, refer the questions to his successor for fresh trial.—*Assanullah v. Hafiz Mahomed Ali*, I. L. R., 10 Cal. 932. [June 30, 1884.]

WHERE a lower Appellate Court, instead of remanding a suit under s. 566 of the Civil Procedure Code, erroneously remands it under s. 562, and the party aggrieved by its order

appeals to the High Court, under cl. 28, s. 538, the High Court cannot deal with the case as if it were a first appeal from a decree. All that the High Court can do is to rectify the procedure of the lower appellate Court, and to direct that it decide the case itself on the merits. *Badam v. Imrat* (I. L. R., 3 All. 675) distinguished. *Rafanarain v. Bhananidin* (2 Weekly Notes, 1882, p. 104) and *Sheoambar Singh v. Lallu Singh* (Weekly Notes, 1882, p. 158), referred to.—*Sohan Lal vs. Aziz-ud-din Begam*, I. L. R., 7 All. 136. [Nov. 4, 1884.]

A COURT of first instance to which issues have been remitted under s. 566 of the Civil Procedure Code by the Appellate Court has only jurisdiction to try the issues remitted, and is *functus officio* in other respects, and cannot make a reference of the case to arbitration, which is only within the jurisdiction of the Appellate Court. *Gossain Dowlut Geer v. Bissessur Geor* (22 W. R. 207) referred to. When a case has been referred to arbitration, the presence of all the arbitrators at all meetings, and, above all, at the last meeting when the final act of arbitration is done, is essential to the validity of the award. Where a case was referred by a Court to the arbitration of three persons, and the parties to the reference agreed to be bound as to the matters in dispute by the decision of a majority of the arbitrators, and one of the arbitrators subsequently refused to act, and withdrew from the arbitration, held that the Court could not pass a decree on the award of the remaining arbitrators, and could only, under s. 510 of the Civil Procedure Code, appoint a new arbitrator, or supersede the arbitration, and proceed with the suit.—*Kazee Syud Nasir Ali v. Musammal Tinoo Dossia* (6 W. R. 95) and *Rohilkhand and Kumaun Bank v. Row* (I. L. R., 6 All. 468) referred to.—*Nand Ram v. Fakir Chand*, I. L. R., 7 All. 523. [Jan. 14, 1885.]

If, on second appeal, it is found that certain material facts, having an important bearing upon a question at issue in the suit, have been omitted to be considered by the lower Appellate Court, the High Court will interfere with the decision of the lower Appellate Court, even though it be on a question of fact.—*Dena Nath Banerjee v. Hari Dasi*, I. L. R., 11 Cal. 429. [April 10, 1885.]

Held by the Full Bench (Tyrrell, J., dissenting), that the findings upon issues remanded by the High Court in second appeal cannot be challenged upon the evidence as in first appeals, but objections to these findings must be restricted to the limits within which the original pleas in second appeal are confined. *Nivath Singh v. Bhikki Singh* (I. L. R., 7 All. 649) referred to. *Per Petheram, C.J., and Tyrrell, J.* (Straight, J., dissenting).—Ss. 505 and 506 of the Civil Procedure Code are, as far as may be incorporated in chap. 42 of the Code relating to second appeals, and when the evidence for disposing of the real issues in the case has been taken and exists on the record, it is the duty of the High Court, on the hearing of a second appeal, to itself fix and determine such issues on the evidence on the record, and not to put the parties to the expense and delay involved by a remand. *Per Straight, J.*—S. 597 of the Civil Procedure Code does not mean that the provisions of chap. 41 relating to first appeals are to be applied indiscriminately or in their entirety to second appeals, and implies no warrant for the decision by the High Court of questions of fact in any shape or at any stage of a second appeal. *Ramanarain v. Bhananidin* (Weekly Notes, 1882, p. 104) and *Sheoambar Singh v. Lallu Singh* (Weekly Notes, 1882, p. 158) referred to. *Per Tyrrell, J.*—The jurisdiction of Courts of second appeal in respect of questions of fact is restricted, inasmuch as the appeal may not be entertained on "grounds" of fact; but, under the circumstances of s. 566 of the Code, no less than under the abnormal circumstances contemplated by the ruling of the Full Bench in *Nivath Singh v. Bhikki Singh* (I. L. R., 7 All. 649), the High Court may take cognizance of omitted issues of fact, and must determine them if there be evidence upon the record sufficient for that purpose. An issue to be tried in this way will, with all the evidence bearing upon it, be open to consideration from any point of view that may be present to the Court on the evidence and otherwise. In cases where the Court, still acting under s. 566, has been obliged, in the absence of evidence on the record, to supplement the defect through the agency of the Court below, its jurisdiction in respect of such evidence does not become limited thereby or by reason only of the circumstance that the evidence is accompanied by a "finding" of the inferior Court—the term "finding" being used in s. 566 in its restricted sense of an answer to the proposition referred for inquiry, and not of an award or decision of the issue before the Court.—*Bal Kishen v. Jasoda Kuar*, I. L. R., 7 All. 765. [June 4, 1885.]

In a suit for pre-emption, based on the *wajib-ul-arz* of a village, the Court of first instance dismissed the claim on the ground that no right of pre-emption had been proved to exist in the village. The lower Appellate Court, dissenting from this opinion, reversed the first Court's decree, and remanded the case under s. 562 of the Civil Procedure Code for a decision on the remaining question of fact *viz.*, the amount of the consideration for

the sale. In appeal from the order of remand, the High Court, on the 3rd January 1884, observed that it was not disposed to interfere with the finding of fact that the plaintiff had a right of pre-emption, and accordingly dismissed the appeal, but added that the Judge was in error in remanding the case under s. 562 of the Code; that his order must so far be set aside; and that he should proceed under s. 565 or s. 566 as might be applicable. The Judge, on receipt of this order, replaced the case on his file, remitted an issue to the Court of first instance under s. 566 as to the amount of consideration, and, accepting the first Court's finding upon that issue, decreed the plaintiff's claim. In second appeal by the defendants the High Court was of opinion that the Judge had disposed of the case upon a condition of things which the plaintiffs had never asserted, inasmuch as he has treated the right of pre-emption which was in issue as one arising from custom, and not, as alleged by the plaintiffs, as arising from a contract between the ancestors of the parties. All the evidence necessary to the determination of the case was on the record. *Held*, by the Full Bench, that the defendants were not prevented by the operation of the High Court's order of the 3rd January 1884 from disputing the right of pre-emption, inasmuch as that order was a decision of a merely interlocutory character passed in the same suit, and the questions of fact involved therein were decided only so far as was necessary for the purpose of passing the order, and it could not be regarded as determining the main question in the suit, which was still open, and must be decided in the final decree in the suit. *Per* Straight, J., that the jurisdiction of the High Court in appeal under s. 588 of the Code from the Judge's order of remand was, like the jurisdiction of the Judge in passing the order, limited by the terms of s. 562; and hence the remark made in the High Court's order dealing with the plaintiffs' right of pre-emption could only be regarded as an *obiter dictum*, and not as determining any question as to the pre-emptive right. *Held* per Petheram, C.J., and Oldfield and Tyrrell, JJ., that the High Court was competent, in second appeal from the Judge's decree, to look into the evidence already on the record for the purpose of finding whether a right of pre-emption existed, in fact, in the village, if the evidence for answering this question was already on the record, and that, in such a case, the question need not be referred to the Court of first appeal. *Bal Kishen v. Jasoda Kuar* (I. L. R., 7 All. 765) referred to. *Per* Straight and Brodhurst, JJ., *contra*. *Bal Kishen v. Jasoda Kuar* (I. L. R., 7 All. 765) referred to.—*Deokishen v. Bansai*, I. L. R., 8 All. 172. [Jan. 22, 1886.]

WHERE a Court of first appeal remanded a case to the Court of first instance for the addition of all necessary parties, and at the same time decided an issue as to the merits, and it appeared that the Court of first instance had not disposed of the case "on a preliminary point so as to exclude any evidence of fact which appeared to the Appellate Court essential to the determination of the rights of the parties," *held*, first, that on an appeal from the order of remand, the decision on the merits, on which the order of remand was not based, was not before the High Court on appeal, and, further, that the order of remand was unsustainable under ss. 562 and 564 of the Civil Procedure Code (Act XIV. of 1882), which are strictly binding on all Courts of first appeal. The proper course for the lower Appellate Court would have been to join the parties whom it found to be necessary, and then, to raise the proper issues as between the plaintiff and those parties, and, if necessary, to refer the issues to the Court of first instance for trial under s. 566.—*Ganesh Bhikaji Juvekar v. Bhikaji Krishna Juvekar*, I. L. R., 10 Bom. 398. [Feb. 10, 1886.]

A DISTRICT Munsif, having taken all the evidence offered on the issues in a suit, disposed of the suit upon his finding on one of the issues without deciding the rest. On appeal the District Judge reversed the decree, and remanded the suit for the trial of the issues left untried. *Held* that, under s. 562 of the Code of Civil Procedure, the order of remand was illegal.—*Anjina v. Kunhunni*, I. L. R., 9 Mad. 365. [Mar. 17, 1886.]

HELD by the Full Bench that s. 587 of the Civil Procedure Code does not make ss. 565 and 566 applicable to second appeals, so as to enable the High Court, in cases where the lower Appellate Court has omitted to frame or try any issue or to determine any essential question of fact, to itself determine the same upon the evidence on the record; but the High Court in such cases must remit issues for trial to the lower Appellate Court. *Balkishen v. Jasoda Kuar* (I. L. R., 7 All. 765) and *Deokishen v. Bansai* (I. L. R., 8 All. 172) overruled on this point.—*Girdhari Lal v. Crawford (JV.)*, I. L. R., 9 All. 147. [Dec. 10, 1886.]

567. Such finding and evidence shall become part of the record in the

Finding and evidence to be put on record.
Objections to finding.

suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to the finding.

After the expiration of the period fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal.

WHERE a first Appellate Court has remanded a case to the Court of first instance for the trial of issues, and where, on the return of the findings on these issues, no objections have been proffered under s. 567 of the Civil Procedure Code, the Appellate Court, after the period fixed for presenting objections, may, at its discretion, receive or decline to receive any written objection, but is, in any case, bound to consider the findings of the lower Court of the merits, and is not precluded from hearing arguments for and against the findings at the hearing of the appeal. *Akbari Begam v. Wilayat Ali* (I. L. R., 2 All. 908) followed. The imperative provisions of s. 574 of the Civil Procedure Code apply alike to cases remanded by the first Appellate Court for the trial of issues and to those in which no such remand has taken place.—*Umed Ali v. Salima Bibi*, I. L. R., 6 All. 388. [May 19, 1884.]

WHERE a first Appellate Court has remanded a case to the Court of first instance for the trial of issues, and where, on the return of findings on these issues, objections under s. 567 of the Civil Procedure Code have not been filed until after the expiration of the prescribed period, the Appellate Court, though not bound to entertain the objections, should nevertheless, upon the hearing of the remand, allow the party filing them to be heard with regard to them. *Ratan Singh v. Wazir* (I. L. R., 1 All. 165) and *Akbari Begam v. Wilayat Ali* (I. L. R., 2 All. 908) referred to. An Appellate Court, because it remands issues, does not therefore, in the absence of subsequent objection by either or both of the parties to the findings when returned, divest itself of its power to exercise its judicial mind as to the propriety of such findings; but, apart from any objection by the parties, it should examine and test them to see whether or not they ought to be accepted. *Akbari Begam v. Wilayat Ali* (I. L. R., 2 All. 908) followed. *Umed Ali v. Salima Bibi* (I. L. R., 6 All. 388) referred to.—*Mumtaz Begam v. Fateh Husain*, I. L. R., 6 All. 391. [May 23, 1884.]

568. The parties to an appeal shall not be entitled to produce additional

Production of additional evidence, whether oral or documentary, in the evidence in Appellate Court. Appellate Court. But if

(a) the Court against whose decree the appeal is made refuses to admit evidence which ought to have been admitted, or

(b) the Appellate Court requires any document to be produced for any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence to be produced, or document to be received, or witness to be examined.

Whenever additional evidence is admitted by an Appellate Court, the Court shall record on its proceedings the reason for such admission.

WHERE the lower Appellate Court allows additional evidence to be taken, though it is not satisfied that the evidence is necessary under cl. a or cl. b of s. 568 of the Code of Civil Procedure, the High Court will interfere, but where this does not appear to be the case, and there is simply an omission on the part of the Appellate Court to record its reasons for allowing additional evidence to be taken, the High Court will not interfere.—*Hafiz Abdul Kurrim v. Sri Kissen Rai*, I. L. R., 11 Cal. 139. [Nov. 25, 1884.]

Held by the Full Bench (Tyrrell, J., dissenting), that the findings upon issues remanded by the High Court in second appeal cannot be challenged upon the evidence as in first appeals, but objections to these findings must be restricted to the limits within which the original pleas in second appeal are confined. *Nivath Singh v. Bhikki Singh* (I. L. R., 7 All. 649) referred to. *Per Petheram, C. J., and Tyrrell, J. (Straight, J., dissenting).*—Ss. 565 and 566 of the Civil Procedure Code are, as far as may be incorporated in chap. 42 of the Code relating to second appeals, and when the evidence for disposing of the real issues in the case has been taken and exists on the record, it is the duty of the High Court, on the hearing of a second appeal, to itself fix and determine such issues on the evidence on the record, and not to put the parties to the expense and delay involved by a remand. *Per Straight, J.*—S. 587 of the Civil Procedure Code does not mean that the provisions of chap. 41 relating to first appeals are to be applied indiscriminately or in their entirety to second appeals, and implies no warrant for the decision by the High Court of questions of

fact in any shape or at any stage of a second appeal. *Ramnarain v. Bhawanidin* (Weekly Notes, 1882, p. 104) and *Sheoambar Singh v. Lallu Singh* (Weekly Notes, 1882, p. 158) referred to. *Per Tyrrell, J.*—The jurisdiction of Courts of second appeal in respect of questions of fact is restricted, inasmuch as the appeal may not be entertained on "grounds" of fact, but, under the circumstances of s. 566 of the Code, no less than under the abnormal circumstances contemplated by the ruling of the Full Bench in *Ninth Singh v. Bhikki Singh* (I. L. R., 7 All. 649), the Court may take cognizance of omitted issues of fact, and must determine them if there be evidence upon the record sufficient for that purpose. An issue to be tried in this way will, with all the evidence bearing upon it, be open to consideration from any point of view that may be present to the Court on the evidence and otherwise. In cases where the Court, still acting under s. 566, has been obliged, in the absence of evidence on the record, to supplement the defect through the agency of the Court below, its jurisdiction in respect of such evidence does not become limited thereby, or by reason only of the circumstance that the evidence is accompanied by a "finding" of the inferior Court—the term "finding" being used in s. 566 in its restricted sense of an answer to the proposition referred for inquiry, and not of an award or decision of the issue before the Court.—*Balkishen v. Jasoda Kuar*, I. L. R., 7 All. 765. [June 4, 1885.]

THE provision in s. 568 of Act XIV. of 1882 as to an Appellate Court recording its reasons for admitting additional evidence is directory merely, and not imperative. Where the first Court of Appeal has admitted additional evidence, the hearing in the second Court of Appeal will not be treated as a first appeal, so as to allow the pleaders to go into the facts.—*Gopal Singh v. Jhakri Rai and others*, I. L. R., 12 Cal. 37. [Aug. 7, 1885.]

569. Whenever additional evidence is allowed to be received, the Appellate Court may either take such evidence or direct the Court against whose decree the appeal is made, or any other subordinate Court, to take such evidence, and to send it, when taken, to the Appellate Court.

570. In all cases where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to be defined and recorded. to which the evidence is to be confined, and record on its proceedings the points so specified.

Of the Judgment in Appeal.

571. The Appellate Court, after hearing the parties or their pleaders, and referring to any part of the proceedings, whether on appeal or in the Court against whose decree the appeal is made, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day, of which notice shall be given to the parties or their pleaders.

572. The judgment shall be written in English; provided that, if English is not the mother-tongue of the Judge, and he is not able to write an intelligible judgment in English, the judgment shall be written in his mother-tongue or in the language of the Court.

573. When the language in which the judgment is written is not the language of the Court, the judgment shall, if any party so require, be translated into such language, and the translation, after it has been ascertained to be correct, shall be signed by the Judge or such officer as he appoints in this behalf.

574. The judgment of the Appellate Court shall state—

- (a) the points for determination;
- (b) the decision thereupon;
- (c) the reasons for the decision; and,

(d) when the decree appealed against is reversed or varied, the relief to which the appellant is entitled ;

and shall, at the time that it is pronounced, be signed and dated

Date and signature. by the Judge or by the Judges concurring therein.

THE order of adjudication made under s. 551 of the Civil Procedure Code is a decree, and the procedure authorized under that section does not dispense with the necessity of drawing up a judgment.—*Royal Reddi v. Linga Reddi*, I. L. R., 3 Mad. 1. [Feb. 23, 1881.]

WHERE the lower Appellate Court omits to give reasons for its decision, the High Court will retain the case in second appeal, and either require the Judge to state his reasons, or, in the event of his absence, refer the questions to his successor for fresh trial.—*Assanullah v. Hafiz Mahomed Ali*, I. L. R., 10 Cal. 932. [June 30, 1884.]

THE judgment of a lower Appellate Court, after setting forth the claim, the defence, the nature of the decree of the first Court, and the effect of the pleas in appeal, concluded, with general observations, as follows: "The point to be determined on appeal is whether or not the decision is consistent with the merits of the case. This Court, having considered the evidence on the record and the judgment of the Munsif, which is explicit enough, concurs with the lower Court . . . The finding arrived at by the Munsif, that the plaintiff's claim is established, is correct and consistent with the evidence. The pleas urged in appeal are therefore undeserving of consideration." Held that this was in law no judgment at all, inasmuch as it did not satisfy the requirements of s. 574 of the Civil Procedure Code, and that the decree of the lower Appellate Court must therefore be set aside, and the record returned to that Court for a proper adjudication, in accordance with the provisions of that section.—*Mahadeo Prasad v. Surju Prasad* (I. L. R., 8 All. 614) referred to. Observations by Mahmood, J., upon the distinction between the duties of the Courts of first appeal and those of the Courts of second appeal in connection with the provisions of ss. 574 and 578 of the Civil Procedure Code, and with the remand of cases for trial *de novo*.—*Ram Narian v. Bhawanidin* (Weekly Notes, 1882, p. 140; see I. L. R., 9 All. p. 29, foot-note) and *Shedamber Singh v. Lalla Singh* (Weekly Notes, 1882, p. 158; see I. L. R., 9 All. p. 30, foot-note) referred to.—*Sohawan and another v. Babu Nand and another*, I. L. R., 9 All. 26. [Aug. 6, 1886.]

THE intention of the Legislature as expressed in s. 633 of the Civil Procedure Code was that the High Court might frame rules as to how its judgments should be given, whether orally or in writing, or according to any mode which might appear to it best in the interests of justice. The section does not more give the High Court power to direct that judgments shall be recorded in a particular book, or with a particular seal. Rule 9 of the rules made under s. 633 in March 1885 is therefore not *ultra vires* of the Court, and it modifies the provisions of s. 574 in their application to judgments of the High Court. With reference to the terms of rule 9, it is not necessary, in a case where the High Court substantially adopts the whole judgment of the Court below, to go through the formality of re-stating the points at issue, the decision upon each point, and the reasons for the decision. *Per Edge, C.J.*—Apart from rule 9, it never was intended that s. 574 of the Code should apply to cases where the High Court, having heard the judgment of the Court below and arguments thereon, comes to the conclusion that both the judgment and the reasons which it gives are completely satisfactory and such as the High Court itself would have given. Assuming the provisions of s. 574 to be applicable, a judgment of the High Court stating merely that the appeal must be dismissed with costs and the judgment of the first Court affirmed, and that it was unnecessary to say more than that the Court agreed with the Judge's reasons, is a substantial compliance with those provisions. The judgment of the High Court in a first appeal was as follows: "This appeal must, in my opinion, be dismissed with costs, and the judgment of the first Court affirmed; and I do not think it necessary to say more than that we agree with the Judge's reasons." The appellant applied for leave to appeal to Her Majesty in Council on the ground that the requirements of s. 574 of the Civil Procedure Code had not been complied with. Held by the Full Bench that the objection involved no substantial question of law, and that the application for leave to appeal must therefore be rejected.—*Sundar Bibi v. Bisheshar Nath and others*, I. L. R., 9 All. 93. [Nov. 15, 1886.]

575. When the appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

Decision when appeal heard by two or more Judges.

If there be no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed :

Provided that, if the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, the appeal may be referred to one or more of the other Judges of the same Court, and shall be decided according to the opinion of the majority (if any) of all the Judges who have heard the appeal, including those who first heard it.

When there is no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed.

The High Court may, from time to time, make rules consistent with this Code to regulate references under this section.

THE provisions of the Letters Patent of 1865, cl. 36, that when the Judges of a Division Bench are equally divided in opinion, the opinion of the Senior Judge shall prevail, has been superseded by Act X. of 1877, s. 573 (which is extended to miscellaneous proceedings of the nature of appeals by s. 647 of that Act), so far as regards cases to which s. 575 is applicable.—*Appaji Bhivray v. Shilal Khubchand*, I. L. R., 3 Bom. 204 (F. B.). [Mar. 31, 1879.]

THE only Bench which can legally deal with an appeal which has been referred under the provisions of s. 575 of the Civil Procedure Code is one which includes the Judges who first heard the appeal, and whose difference in opinion on a point of law necessitated the reference. *Khelut Chunder Ghose v. Tara Churn Koondo Chowdhry* (6 W. R. 269), *Mahomed Akil v. Asad-un-nissa Bibi* (5 Wymn's Rep. 69), and *Brand v. Hammersmith and City Railway Company* (36 L. J. Q. B. 137), referred to. The word "judgment" as used in Rule II. of the Rules made by the High Court, North-Western Provinces, to regulate references under s. 575 of the Civil Procedure Code, must not be understood in its strict sense, but merely as an expression of opinion containing reasons for a contemplated or proposed judgment.—*Rohilkhand and Kumaon Bank, Limited, v. Row*, I. L. R., 6 All. 468. [May 5, 1884.]

S. 575 of Act XIV. of 1882 does not take away the right of appeal which is given by cl. 15 of the Letters Patent. When the judgment of a lower Court has been confirmed under s. 575 of the Code of Civil Procedure by reason of one of the Judges of the Appeal Court agreeing upon the facts with the Court below, an appeal will lie against such judgment, notwithstanding the terms of s. 575. *Appaji Bhivray v. Shilal Khubchand* (I. L. R., 3 Bom. 204) approved.—*Sri Gridharaji Maharaj Tickait v. Purushottam Gossami*, I. L. R., 10 Cal. 814. [June 5, 1884.]

576. When the appeal is heard by more Judges than one, any Judge

Dissenting to be recorded.

dissenting from the judgment of the Court shall state in writing the decision or order which he

thinks should be passed on the appeal, and he may state his reasons for the same.

577. The judgment may be for confirming, varying, or reversing the

What judgment may direct.

decree against which the appeal is made, or, if the parties to the appeal agree as to the form which

the decree in appeal shall take, or as to the order to be passed in appeal, the Appellate Court may pass a decree or order accordingly.

M sued K and J to enforce a right of pre-emption in respect of property which he alleged K had sold to J. K denied that she had sold such property to J. J set up as a defence that M had waived his right of pre-emption. The Court of first instance dismissed the suit on the ground that the alleged sale had not taken place. J appealed, making M and K respondents. The lower Appellate Court dismissed the appeal, also holding that the alleged sale had not taken place. J then appealed to the High Court, making K the respondent. *Held* that neither the appeal from the original decree in the suit, nor the appeal from the appellate decree therein, was admissible. *Held* also that the finding as to the alleged sale was one between the plaintiff and defendants in the suit, and not between the defendant-vendor and the defendant-vendee who were litigating, and would not bar adjudication of the matter in issue between them in a suit brought by the latter for the establishment of the sale.—*Jumna Singh and another v. Kamar-un-nissa*, I. L. R., 3 All. 152 (F. B.). [Aug. 12, 1880.]

578. No decree shall be reversed or substantially varied, nor shall any

No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.

case be remanded, in appeal, on account of any error, defect, or irregularity, whether in the decision or in any order passed in the suit, or otherwise, not affecting the merits of the case or the jurisdiction of the Court.

In June 1875, L executed a bond in favour of S, in which he mortgaged, amongst other property, a village called *Chand Khera* as security for the payment of certain moneys. He subsequently sold such village to A, concealing the fact that it had been mortgaged to S. On this fact coming to the knowledge of A, he threatened L with a criminal prosecution, whereupon L proposed to S, in writing, that the security of a share in a village called *Kelsa*, which he alleged was his property, should be substituted for the security of *Chand Khera*. S accepted this proposal by a letter in which he referred to L's proposal in terms. It subsequently appeared that the share in *Kelsa* did not belong to L, but to another person. S having sued upon his bond, claiming to enforce thereunder a lien upon *Chand Khera* A set up as a defence to the suit that S had agreed to substitute *Kelsa* for *Chand Khera* in the bond, producing S's letter as evidence of the agreement. Held that such letter operated as a release, and should therefore have been stamped and registered. Held also that an objection may properly be taken in a Court of first appeal to an unstamped document, and such Court is bound to entertain the objection, and may direct that the document be stamped and the penalty imposed. Held also that L's fraud vitiated S's agreement to substitute the security of *Kelsa* for the security of *Chand Khera* in the bond, and S was entitled, notwithstanding A might have purchased the latter property in good faith, to the enforcement of the lien created thereon by the bond. *Mark Ridded Currie v. S. V. Mutu Ramen Chetty* (3 B. L. R. 126) discussed.—*Safdar Ali Khan v. Lachman Das and others*, I. L. R., 2 All. 554. [Dec. 11, 1879.]

THE refusal of a plaintiff-respondent to make good a deficiency in court-fees in respect of his plaint when called upon to do so by the Appellate Court is not a ground upon which the Appellate Court should reverse the decree of the Court of first instance and dismiss the suit.—*Mehdi Husain v. Madar Bakshi and others*, I. L. R., 2 All. 889. [May 7, 1880.]

IN a suit to recover possession of certain immoveable property alleged to have been purchased by the plaintiff from a Hindu widow, who claimed to have held the same as heir of her husband, the defendant, who was the mother of the husband, contended, *inter alia*, that the alleged purchase and sale were invalid, by reason that she herself was entitled to maintenance out of the property. The first Court gave the plaintiff a decree, and this decree was affirmed on appeal by the District Judge, who, however, gave no reason of his own for his judgment, but merely adopted those of the lower Court. Held that, having regard to the nature of the case and the simplicity of the point for determination, the fact of the District Judge having omitted to state his reasons did not amount to such an error of law within the meaning of s. 578 of the Code of Civil Procedure as affected the merits of the case or the jurisdiction of the Court.—*Rohimoui Dabi v. Zemirundin and others*, 8 C. L. R. 597. [Mar. 4, 1881.]

A SUIT was instituted and tried on the merits in the Court of a Subordinate Judge without any objection being taken, either by the defendants or by the Court, that the plaint was insufficiently stamped. The defendants appealed on the merits, and the District Judge, being of opinion that the stamp on the plaint was inadequate, called upon the plaintiff to pay the additional fee which would have been payable had the objection been taken and the question rightly decided in the Court of first instance. Held, on second appeal, that the order of the Judge was properly made under s. 12, cl. 2, of the Court Fees (Act VII. of 1870).—*Shama Soondary v. Hurne Soondary*, I. L. R., 7 Cal. 348. [May 10, 1881.]

THE defendants in a suit on a bond admitted the execution of the bond, but denied that they had received, as the bond recited they had, at the time of its execution, the consideration for it. The Court of first instance, instead of calling on the defendants to establish the fact that they had not received the consideration for the bond, as it ought to have done under the circumstances, irregularly allowed the plaintiff to produce witnesses to prove that the consideration for the bond had been paid at the time of its execution. The evidence of these witnesses proved that the consideration of the bond had not been paid at the time of execution, and that, if it had been paid at all, it had been paid at some subsequent time. The plaintiff did not give any further evidence to establish such payment, and the Court of first instance, without calling on the defendants to establish their defence, dismissed the suit. The lower Appellate Court held that the defendants should have been

required to begin under the circumstances, and reversed the decree of the Court of first instance, and gave the plaintiff a decree. *Held* that, although the plaintiff ought not to have begun, yet as he had done so, and his witnesses had proved that the consideration for the bond had not been paid as admitted in the bond, a new case was opened up, in which the *onus* was shifted back to the plaintiff to establish that he had, not at the time alleged in the bond, but at some subsequent time, paid to the defendant the consideration for the bond. Also that it was doubtful, having regard to the provisions of s. 578 of Act X. of 1877, whether it was competent for the lower Appellate Court to reverse the decision of the Court of first instance; but even if it were, the lower Appellate Court should not have ignored what had taken place, but should have dealt with the case in appeal in the shape it came before it.—*Makund and others v. Bahori Lal*, I. L. R., 3 All. 824. [May 26, 1881.]

THE sons of R and of K and of S possessed proprietary rights in two maháls of a certain mauza. P possessed proprietary rights in one of those maháls. In April 1873, the sons of R sold their proprietary rights in both maháls to G. In August 1879, the sons of K sold their proprietary rights in both maháls to G. Later in the same month the sons of S sold their proprietary rights in both maháls to N. G sued N to enforce a right of pre-emption in respect of the sale to the latter, and obtained a decree. P then sued to enforce a right of pre-emption in respect of the three sales mentioned above, so far as they related to the mahál of which he was a co-sharer, joining as defendants G and N and the vendors to them. G alone objected in the Court of first instance to the frame of the suit. That Court overruled the objection, and gave P a decree. The lower Appellate Court reversed this decree on the ground of misjoinder. *Held* that in respect of G there was no misjoinder, but that in respect of the other defendants there was misjoinder of both causes of action and parties. Inasmuch as, however, G alone objected to the frame of the suit, and the defect did not affect the merits of the case or the jurisdiction of the Court, the lower Appellate Court ought not, regard being had to s. 578 of Act X. of 1877, to have reversed the decree of the Court of first instance by reason of such defect.—*Kalian Singh v. Gur Dayal*, I. L. R., 4 All. 163. [Dec. 14, 1881.]

THE plaintiffs in this suit, alleging that they were co-sharers of a certain village, that certain land situate in such village was the property of the co-sharers, and that such land had been improperly sold by the persons occupying it to one of the co-sharers, sued the vendors and the purchaser and the other co-sharers for possession of their share of such land and the setting aside of the sale so far as their share was concerned, and valued the suit according to their share. *Held* that the error in the frame and valuation of the suit, inasmuch as it did not affect the jurisdiction of the Court in which the suit was instituted or the merits of the case, was not, under s. 578 of the Civil Procedure Code, a ground on which the Appellate Court should have reversed the decree of the Court of first instance. *Unnoda Persad Roy v. Erskin* (12 B. L. R. 370) distinguished.—*Param and others v. Achal*, I. L. R., 4 All. 289. [Feb. 10, 1882.]

SUIT by payee against drawer upon a hundi drawn in British India upon a person at Colombo. The hundi was not stamped when drawn. Objection taken to its admission in evidence by defendant was allowed by the Munsif, but plaintiff was permitted to sue for the amount due upon the original consideration. The suit was dismissed on the ground that no consideration was proved. Upon appeal the District Judge held that the hundi did not require a stamp as it was not intended to operate in British India, and admitted the hundi in evidence as a business-letter admitting responsibility, and found that there was consideration. *Held* upon second appeal that the hundi having been admitted in evidence, though contrary to law, by the District Judge, no objection could be taken to the decree in second appeal upon that account.—*Rámásámi Chetti v. Rámásámi Chetti and another*, I. L. R., 5 Mad. 220. [April 19, 1882.]

A MAHOMEDAN residing at Zanzibar let a house situated there to the defendant, to be held by the latter as long as he pleased, under a lease in which he (the lessor) stipulated never to remove the lessee. The plaintiff subsequently, with full knowledge of the lease, purchased the same house from the lessor, and as such purchaser sued to eject the defendant. The plaintiff tendered evidence to show that by the custom of Zanzibar the defendant's tenancy was determined upon the sale by the landlord. This evidence was refused. *Held* that the alleged custom, even if proved, was invalid. It was unreasonable, as enabling a man, after having granted a lease, to deprive the lessee of the entire benefit of his lease. The exclusion of evidence in the lower Court is not sufficient ground for reversing that Court's decree, unless the Appeal Court comes to the conclusion that the evidence refused, if it had been received, ought to have varied the decision.—*DeSouza (C. R.) v. Pestanji*, I. L. R., 8 Bom. 408. [April 29, 1884.]

Per Petheram, C.J., and Brodhurst, Mahmood, and Duthoit, JJ.—The object of ss. 19 and 20 of the Bengal Civil Courts Act, 1871, was to create in the District Judge, Subordinate Judge, and Munsif, concurrent jurisdiction up to Rs. 1,000. *Per Petheram, C.J.*—S. 15 of the Civil Procedure Code is a proviso to those sections. The word "shall" in that section is imperative on the court. The word is used for the purpose of protecting the Courts. The suitor shall be obliged to bring his suit in the Court of the lowest grade competent to try it. The object of the Legislature is that the Court of the higher grade shall not be overcrowded with suits. Whenever an Act confers a benefit, the donee may exercise the same or not at his pleasure. The proviso is for the benefit of the Court of the higher grade, and it is not bound to take advantage of it. If it does not wish to try the suit, it may refuse to entertain it. If it wishes to retain the suit in its Court, it may do so; it is not bound to refuse to entertain it. *Per Duthoit, J.*—The words in s. 57 of the Civil Procedure Code "shall be" are an instruction which the Court is bound to follow; and they are, therefore, a restraint upon jurisdiction. The effect, therefore, of the concurrent jurisdiction of Subordinate Judge and Munsifs is not to allow to a Subordinate Judge discretion as to accepting or not accepting for trial by himself suits cognizable by the inferior tribunal. *Brodhurst and Mahmood, JJ.*—S. 15 of the Civil Procedure Code is a rule of procedure, not of jurisdiction; and whilst it lays down that a suit shall be instituted in the Court of the lowest grade, it does not oust the jurisdiction of the Courts of higher grades. *Russick Chunder Mohunt v. Ram Lal Shaha* (22 W. R. 301), *Sircar v. Begum Bibi* (25 W. R. 219), followed. *Per Oldfield, J.*—S. 15 of the Civil Procedure Code is a provision entirely of procedure as distinct from jurisdiction, and its effect on s. 19 of the Bengal Civil Courts Act is that the jurisdiction of the District Judge and Subordinate Judge extends to all original suits cognizable by the Civil Court, subject in its exercise to a certain procedure, namely, that the suits be instituted in the Court of the lowest grade competent to try them. *Held*, therefore, by Petheram, C.J., and Oldfield, Brodhurst, and Mahmood, JJ., where a Subordinate Judge had tried a suit which a Munsif, a Court of a lower grade, might have tried, that the Subordinate Judge had not acted without jurisdiction. The plaint in such suit had been in the first instance presented to the Munsif, who had returned it to be presented to the Subordinate Judge. *Per Duthoit, J.*—The decree of the Subordinate Judge would not be liable to be reversed in appeal for want of jurisdiction, for the jurisdiction was there, though it ought not to have been exercised. This view of the matter was consistent with the received canon of construction, that unless the Legislature uses negative words, or words showing an intention to treat the observance of a rule of procedure as essential, the rule will ordinarily be treated as a direction only. Under the circumstances, therefore, the District Judge had, in appeal, correctly refused to entertain the plea of defect in jurisdiction. *Per Mahmood, J.*—The institution of a suit in a Court of higher grade than the Court which is competent to try it is not a question either as to the jurisdiction or affecting the merits of the case. It is a question of the kind provided for by s. 578 of the Civil Procedure Code, and the irregularity is not one which affects "the merits of the case or the jurisdiction of the Court" within the meaning of the section. The plea of want of jurisdiction can be entertained for the first time at any stage of a suit, provided there is on the record sufficient material to substantiate it.—*Nidhi Lal v. Mazhar Husain*, I. L. R., 7 All. 230. [Dec. 13, 1884.]

A suit brought against K, the widow of R, a Hindu, by the representatives of R's brothers, H and P, for possession of his estate, ended in a compromise by which the defendant recognized the plaintiffs' rights, and conceded that the family was joint. After K's death, M, a daughter of R, brought a suit on her own behalf against the above-mentioned plaintiffs for possession of her father's estate, but afterwards withdrew her claim. Subsequently, S, M's son, who had been born after K's compromise, brought a suit against M and the representatives of H and P to recover possession of the estate, on the allegation that, the family being a divided one, he was entitled, under the Hindu law, to succeed to such estate, and that both the compromise entered into by K and the withdrawal of the former suit by M were in fraud of his succession and did not affect his rights. The Court of first instance found that the plaintiff was entitled to succeed to the estate, but that, his mother being still alive, he was entitled to possession after her death only, and, upon these findings, gave him a decree declaring his right to possession on M's death. The lower Appellate Court reversed the decree, holding that the compromise entered into by K was conclusive against the plaintiffs' claim, and also that, during his mother's lifetime, he had no *locus standi* to maintain the suit. *Per Mahmood, J.*, that the plaintiff's rights as a daughter's son (which were not affected by his birth having taken place after his maternal grandfather's death) did not entitle him, under ordinary circumstances, to succeed to his maternal grandfather's estate in a divided Hindu family during the existence of a daughter, whether she were his own mother or his maternal aunt; and that the claim for possession

was therefore rightly dismissed. *Amirtolal Bose v. Rajoneekant Mitter* (15 B. L. R. 10; L. R., 2 Ind. Ap. 118), *Sibta v. Badri Prasad* (I. L. R., 3 All. 184), and *Baij Nath v. Mahabir* (I. L. R., 1 All. 608), referred to. Also that the prayer in the plaint was wide enough to include a prayer for declaratory relief such as the first Court had given. Also that the rule whereby decrees obtained against a Hindu widow succeeding to her husband's estate as heir are binding by way of *res judicata* against all who in the order of succession come after her, and in that sense may be dealt with as her representatives, was limited to decrees fairly obtained against the widow in a contested and *bond-fide* litigation, and would not apply to the compromise effected by K, which could scarcely be regarded as on a higher footing than an alienation which the widow in possession of her husband's divided estate might have made, and which the plaintiff distinctly alleged had not been fairly obtained. *Bani Anand Kunwar v. Court of Wards* (I. L. R., 6 Cal. 764; L. R., 8 Ind. Ap. 14), *Nand Kumar v. Radha Kuari* (I. L. R., 1 All. 282), and *Katam Natchiar's Case* (Q. B. 1890, I. A. 543), referred to. Also that M's withdrawal of her suit was not a bar to the suit of the plaintiff. Also that it could not be said that a daughter's son was not, under any condition, competent to maintain a declaratory suit of this nature during the lifetime of his mother or maternal aunt, in respect of his maternal grandfather's property, to the full ownership of which he had a reversionary right. Also that the awarding of declaratory relief as regulated by s. 42 of the Specific Relief Act is a discretionary power which Courts of equity are empowered to exercise with reference to the circumstances of each case and the nature of the facts stated in the plaint and the prayer of the plaintiff; that so long as a Court of first instance possesses jurisdiction to entertain a declaratory suit, and, entering into the merits of the case, arrives at right conclusions, and awards a declaratory decree, such a decree cannot be reversed in appeal simply because the discretion has been improperly exercised; and that such improper exercise of discretion under s. 42 of the Specific Relief Act has no higher footing than that of an error, defect, or irregularity not affecting the merits of the case or the jurisdiction of the Court within the meaning of s. 578 of the Civil Procedure Code. This does not imply that, even in cases where the discretionary power to award declaratory relief has been exercised wholly arbitrarily and in a manner grossly inconsistent with judicial principles, the Court of appeal would have no power to interfere. *Ram Kanaye Chuckerbutty v. Prosunno Coomar Sein* (13 W. R. 175), *Sadut Ali Khan v. Khajeh Abdool Gunney* (11 B. L. R. 203; L. R., Ind. Ap. Sup. Vol. 165), *Sheo Singh Bai v. Dakho* (I. L. R., 1 All. 688; L. R., 6 Ind. Ap. 37), and *Damoodar Surmah v. Mohee Kant Surmah* (21 W. R. 54) referred to.—*Sant Kumar v. Deo Saran*, I. L. R., 3 All. 365. [May 12, 1886.]

A SUIT was brought by the Political Agent, Southern Marátha Country, as administrator of the estate of the Chief of Mudhol, who was described in the plaint as being nineteen years of age, to eject the defendants from certain lands, belonging to the Chief, situated in the Sátára District. The defendants raised a preliminary objection to the institution of the suit by the Political Agent, on the ground that he was neither a certificated guardian of the Chief under the Bombay Minors Act (XX. of 1864), nor a recognized agent within the meaning of s. 37 of the Civil Procedure Code. Held that the appointment, by Government, of the Political Agent to manage the estate of the Chief of Mudhol during a certain period could not give him the position contemplated by the Bombay Minors Act (XX. of 1864). With regard to property in British India, he had no authority to sue on behalf of the minor, without obtaining a certificate of administration under the Act. Held also that the Political Agent was not a "recognized agent" of the Chief of Mudhol within the meaning of s. 37, cl. c of the Code of Civil Procedure. Held also that the irregularity of the Political Agent's suing for the Chief, without authority, was one affecting the merits of the case, though not the jurisdiction of the Court. If the Political Agent was not properly representing the Chief, he had no *merits*, no right as against the defendants. The District Judge was, therefore, right in reversing the decrees of the first Court, s. 578 of the Code of Civil Procedure having no application to the present case.—*Venkatráv Ráje Ghorpáde v. Mádhavár Rámchandrá*, I. L. R., 11 Bom. 58. [July 28, 1886.]

ALTHOUGH the proper and regular manner of giving permission to sue on behalf of a minor is by an order recorded in the order-sheet, there is, nevertheless, nothing in the nature of the sanction provided by the s. 3 of Act XL of 1858 which takes it out of the general rule of evidence that sanction may be proved by express words or by implication. Where on a construction of the plaint and the pleadings it is found that the minor is the real plaintiff, the mere fact of his not having been properly described in accordance with s. 440 of the Civil Procedure Code is no ground for setting aside a decree passed in the suit.—*Bhaba Pershad Khan v. Secretary of State for India*, I. L. R., 14 Cal. 159. [Aug. 14, 1886.]

Of the Decree in Appeal.

Date and contents of decree.

579. The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

The decree shall contain the number of the appeal, and the memorandum of appeal, including the names and description of the appellant and respondent, and shall specify clearly the relief granted or other determination of the appeal.

The decree shall also state the amount of costs incurred in the appeal, and by what parties and in what proportions such costs and the costs in the suit are to be paid.

The decree shall be signed and dated by the Judge or Judges who passed it :

Provided that where there are more Judges than one, if there be a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

Judge dissenting from judgment need not sign decree.

THE order of adjudication made under s. 551 of the Civil Procedure Code is a decree, and the procedure authorized under that section does not dispense with the necessity of drawing up a judgment.—*Royal Reddi v. Linga Reddi*, I. L. R., 3 Mad. 1. [Feb. 23, 1881.]

ON a second appeal the High Court awarded the plaintiff's claim with costs throughout; but the claim, as stated in the paper-book of appeal, differed from the claim as it had been stated in the plaint. Held that the award of the claim was to be understood as referring to the claim as stated in the plaint, and not as described in the paper-book. Ss. 579 and 587 of the Civil Procedure Code (Act XIV. of 1882) do not require the claim to be stated in the decree, so as to make such statement a part of the decree itself.—*Soude Shrinivasapa v. Krishnappa Hegde*, I. L. R., 11 Bom. 177. [Sep. 21, 1886.]

Copies of judgment and decree to be furnished to parties.

580. Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Court and at their expense.

581. A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed against, and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

Certified copy of decree to be sent to Court whose decree appealed against.

582. The Appellate Court shall have, in appeals under this chapter, the same powers, and shall perform, as nearly as may be, the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under Chapter V. ; and in Chapter XXI., so far as may be, the words "plaintiff," "defendant," and "suit," shall be held to include an appellant, a respondent, and an appeal, respectively, in proceedings arising out of the death, marriage, or insolvency of parties to an appeal.

The provisions hereinbefore contained shall apply to appeals under this chapter, so far as such provisions are applicable.

UNDER s. 582 of the Civil Procedure Code, a Court of Appeal has the power, with the consent of the parties, of referring to arbitration matters in dispute in an appeal. *Jugessur Dey v. Kriartho Moysa Dossee* (12 B. L. R. 266) dissented from.—*Sangaralingam Pillai, In re*, I. L. R., 3 Mad. 78. [Oct. 7, 1880.]

Per Mitter, J. (Garth, C.J., dubitante).—Notwithstanding that s. 582, Civil Procedure Code, does not expressly direct that the word “plaintiff” occurring in s. 366 shall be held to include an “appellant,” yet the power conferred by s. 366 on the Court of original jurisdiction to award costs against the estate of a deceased plaintiff may, by analogy, be taken to be conferred on the Appellate Court. *Lakshmi Bai v. Balkrishna* (I. L. R., 4 Bom. 654) followed. *Rajmonee Dabee v. Chunder Kant Sander* (I. L. R., 8 Cal. 440. [Dec. 21, 1884].)

AN order rejecting a memorandum of appeal as barred by limitation is a “decree” within the meaning of s. 2 of the Civil Procedure Code; it is therefore appealable, and not open to revision by the High Court under s. 622 of the Code. *Gajraj Singh v. Bhagwant Singh and Dianatullah* (Weekly Notes, 1883, p. 255) and *Rog. v. Wajid Ali Shah* (I. L. R., 6 All. 438) distinguished.—*Gulab Rai v. Mangli Lal* (I. L. R., 7 All. 42. [June 29, 1884].)

UNDER s. 368 of the Civil Procedure Code (Act XIV. of 1882), a plaintiff may have the representatives of a deceased sole defendant placed on the record so that he may continue his suit against them, but there is no section which allows the representatives of a sole defendant, who has died, to be placed on the record at their own request. Consequently, s. 582 gives no authority to a Civil Court to place on the record, at their own request, the representatives of a deceased sole respondent. Such an application cannot be entertained. —*Bai Javer v. Hathising Kesrisingh*, I. L. R., 9 Bom. 56. [July 14, 1884.]

HAVING regard to s. 3 of Act XIV. of 1882, it is clear that the word “Code” in sch. 2, art. 171B of Act XV. of 1877, applies to the present Code of Civil Procedure (Act XIV. of 1882), and that, therefore, the word “defendant” in s. 368 of that Code, when read with s. 582, must be held to include “respondent.”—In the Matter of the Petition of Soshi Bhusan Chand; *Soshi Bhusan Chand v. Grish Chander Talukdar*, I. L. R., 11 Cal. 694. [Jan. 27, 1885.]

HELD by the Full Bench (Mahmood, J., dissenting), that s. 582 of the Civil Procedure Code does not make the provisions of chap. 21, relating to the death of a defendant in a suit, applicable to the death of a plaintiff-respondent in an appeal, so as to render it obligatory on the defendant-appellant to make an application to the Court praying that the legal representatives of the deceased be made parties to the appeal; and that, where there has been no such application, the appeal does not abate. *Per Petheram, C.J.*—The words, “so far as may be,” in the second clause of the first para. of s. 368, must be construed as meaning “so far as may be necessary to carry into effect the remedies contemplated by chap. 21.” *Per Mahmood, J., contra*, that the object of s. 582 of the Civil Procedure Code is to obviate the necessity of repeating the provisions of chap. 21 so as to make them applicable to appeals, and the words “appellant” and “respondent” as used in the section include both plaintiffs and defendants in an appeal; that the whole Code maintains the analogy between the position of a respondent and that of a defendant for the purposes of being impleaded and brought before the Court; that chap. 21 applies to cases where a plaintiff-respondent has died; and that, in such a case, and where no application has been made, within the period prescribed therefor, praying that the legal representatives of the deceased be made parties in his place, the appeal abates. Also *per Mahmood, J.*—The word “defendant” as used in art. 171B of the Limitation Act (XV. of 1877) must be taken to include a respondent, whether plaintiff or defendant in the suit. *Lakshmi Bai v. Balkrishna* (I. L. R., 4 Bom. 654), *Rajmonee Dabee v. Chaudar Kant Sander* (I. L. R., 8 Cal. 440), and *Bai Javer v. Hathising Kesrisingh* (I. L. R., 9 Bom. 56), referred to.—*Narain Dass v. Lajja Ram*, I. L. R., 7 All. 603. [Feb. 21, 1885.]

Per Curiam (Kerian, J., dissenting).—An application by an appellant to make the representative of a deceased respondent party to the appeal does not fall under art. 171B, but under art. 178 of sch. 2 of the Indian Limitation Act. 1871.—*Lakshmi v. Sri Devi*, I. L. R., 9 Mad. 1. [May 2, 1885.]

AN appeal was preferred against a decree of an Original Court dismissing a suit, and the Appellate Court sent the case back for the purpose of certain evidence being taken, and certified to it. Pending that being done, the parties applied to the Appellate Court to refer the case to arbitration, and that Court referred that application to the Original Court for disposal, although the case was still pending on its own file for disposal. Subsequently another application was made to the Original Court to refer the case to arbitration, and on the 10th May the record was sent to the arbitrator with directions to submit his award within seven days. On the 12th September, as the award had not been sent in, the Original Court passed an order recalling the record, and subsequently the award of the arbitrator, dated the 12th September, was filed. The Original Court thereupon forwarded the record to the Appellate Court for its decision. Objections were taken to the

award, but overruled, and the Appellate Court passed an order directing the case to be sent back to the Original Court, with orders to pass a formal decree in accordance with the award of the arbitrator. *Held* that a second appeal lay against the last-mentioned order, inasmuch as it amounted to a decree under the provisions of s. 2 of the Civil Procedure Code. *Held* also that the award was bad in law, because the time within which it was directed to be made had never been enlarged, and the Court's order of the 12th September recalling the record could not be taken as an indication that the time was enlarged. *Semble*, an Appellate Court has the power to refer a case to arbitration at the instance of the parties under s. 582 of the Code of Civil Procedure, 1882. *In re Sangaralingam Pillai* (I. L. R., 3 Mad. 78) cited; *Jugessur Dey v. Kritartha Moyee Dossee* (12 B. L. R., 266) cited and distinguished.—*Bhugwan Dass Marwari v. Nund Lal Sein*, I. L. R., 12 Cal. 173. [Aug. 10, 1885.]

THERE is no power in the Code of Civil Procedure (Act XIV. of 1882) to make a party to the suit a co-appellant. Ss. 32 and 582 of the Code give to an Appellate Court power only to strike out the name of a party, or to direct new parties to be added to the suit, whether as plaintiffs or defendants.—*Vasudev Balkrishna v. Salubai*, I. L. R., 10 Bom. 227. [Sep. 7, 1885.]

WHERE, on appeal from a decree dismissing a suit, the Appellate Court, being of opinion that the plaint was informally drawn, and its allegations regarding the cause of action not sufficiently specific, gave the plaintiff permission, under s. 373 of the Civil Procedure Code, to withdraw the suit, with leave to institute a fresh one, *held* the order of the Appellate Court was a "decree" within the meaning of the Civil Procedure Code, and afforded a proper ground of second appeal to the High Court. *Per* Straight, J., that, with reference to the terms of s. 582 of the Civil Procedure Code, the Appellate Court had power to avail itself of the provisions of s. 373, and, therefore, had a discretion to make the order allowing the plaintiff to withdraw the suit and institute a fresh one. *Gregory v. Doolee Chand Kandary Mull* (14 W. R., O. J., 17) and *Khatoon Kunwar v. Hurdoot Narain Singh* (20 W. R. 163) referred to. Also *per* Straight, J., that it could not be said that the Appellate Court in this case had exercised its discretion so unreasonably or erroneously as to compel the interference of the High Court with it in appeal. *Per* Tyrrell, J., that it might be taken that the Appellate Court, though not so stating in express terms, meant to set aside, and did set aside, the decree of the Court of first instance, regarding it as a decree which could not have been rightly made, and must be set aside, by reason of the radical defect in the plaint, the basis of the suit and the decree; and that, in this view, there was no legal objection to the exercise by the Appellate Court of the discretionary power of chap. 22 of the Code:—*Ganga Ram v. Data Ram*, I. L. R., 8 All. 82. [Dec. 18, 1885.]

THE plaintiff's claim to redeem certain lands was rejected by a Subordinate Judge on 21st December 1882. On the 1st February 1883, the plaintiff, who was an agriculturist, presented an application for review to the Special Judge appointed under the Dekkhan Agriculturists' Relief Act. His application was rejected by that Judge, who was of opinion that the plaintiff's remedy lay in an appeal to the District Judge. The plaintiff was not informed of the result of his application to the Special Judge until the following May, at which time the Court of the District Judge was closed for vacation. On the 3rd June 1883, he presented an appeal on the opening of the District Court. The District Judge dismissed the appeal as barred by limitation. On appeal to the High Court a preliminary objection being taken that a second appeal would not lie, *held* that the order of the District Judge, having the force of a decree within the meaning of s. 2 of the Civil Procedure Code (Act XIV. of 1882), was appealable under s. 540 of the Code. Order discharged under the circumstances, the District Judge having given no reasons for making the order.—*Raghunath Gopal v. Nilu Nathaji*, I. L. R., 9 Bom. 452. [Mar. 31, 1886.]

ART. 171B, sch. 2, of the Limitation Act (XV. of 1877), applies to applications to have the representative of a deceased defendant-respondent made a respondent.—*Baldeo v. Bismihan Begam*, I. L. R., 9 All. 118. [Nov. 25, 1886.]

583. When a party entitled to any benefit (by way of restitution or

Execution of decrees of Appellate Court.

otherwise) under a decree passed in an appeal under this chapter desires to obtain execution of the same, he shall apply to the Court which passed the decree against which the appeal was preferred; and such Court shall proceed to execute the decree passed in appeal, according to the rules hereinbefore prescribed for the execution of decrees in suits.

A DECREE for pre-emption was passed conditionally upon payment by the decree-holder of Rs. 1,139, and in July 1880 the plaintiff paid this amount into Court, and it was drawn out by the defendant in August 1881. Meanwhile, in July 1881, the High Court in second appeal raised the amount to be paid by the plaintiff to Rs. 2,400, but the plaintiff allowed the time limited for payment of the excess difference to elapse without paying it, and the decree for pre-emption thereupon became dead. In May 1883, the plaintiff applied in the execution department for the refund of the deposit which had been drawn and retained by the defendant. This application was granted, and the defendant ordered to refund; and this order was confirmed on appeal in January 1885, and by the High Court in second appeal, in May 1885. Meanwhile the first Court had suspended execution of the order pending the result of the appeal, and in December 1884 removed the application temporarily from the "pending" list. In February 1885, the plaintiff applied for restitution of the amount deposited, asking for attachment and sale of property belonging to the defendant. This application was dismissed as barred by limitation. *Held* that this application was only a revival of the application of May 1883, which was within time. *Held* also that the plaintiff was, in the sense of s. 583 of the Civil Procedure Code, "a party entitled to a benefit by way of restitution under the decree" of the High Court of July 1881; that it was a necessary incident of that decree that he was entitled to restitution of the sum which he had paid as the sufficient price under the decree of the lower Appellate Court; that he was competent under s. 583 to move the local Court to execute the appellate decree in this respect in his favour "according to the rules prescribed for the execution of decree in suits;" that he did this in May 1883 by an application made according to law in the proper Court in the sense of art. 179 of the Limitation Act; and that his present application to the same effect, being within three years from that application, was within time.—*Nand Ram v. Sita Ram*, I. L. R., 8 All. 645. [July 8, 1886.]

WHERE a review of judgment has been applied for and, after notice to the other side, refused, the period during which such application was pending cannot be excluded in computing the period of limitation for execution of the decree under art. 179 (8) of sch. 2 of the Indian Limitation Act. *Semle*.—An application for refund of moneys levied in execution of a decree subsequently reversed on appeal is not governed by art. 179, but by art. 178 of sch. 2 of the Limitation Act.—*Kurupam Zamindar v. Sadasiva*, I. L. R., 10 Mad. 66. [Sep. 25, 1886.]

CHAPTER XLII.

OF APPEALS FROM APPELLATE DECREES.

584. Unless when otherwise provided by this Code or by any other

Second appeals to High law, from all decrees passed in appeal by any Court Court. subordinate to a High Court, an appeal shall lie to the High Court on any of the following grounds (namely)—

Grounds of second appeal. (a) the decision being contrary to some specified law or usage having the force of law :

(b) the decision having failed to determine some material issue of law or usage having the force of law ;

(c) a substantial error or defect in the procedure as prescribed by this Code or any other law, which may possibly have produced error or defect in the decision of the case upon the merits.

A SUIT to redeem a usufructuary mortgage of certain lands was instituted in the Munsif's Court. After the suit had been admitted, and the parties called on to produce evidence, the Munsif ordered the plaint in the suit to be returned to the plaintiff for presentation in the proper Court, on the ground that the suit should have been instituted in the Court of the Subordinate Judge, the value of the property in the suit being beyond the jurisdiction of a Munsif. *Held* that, under Act VII. of 1859, the Munsif's order was appealable to the lower Appellate Court, and, under Act X. of 1877, the lower Appellate Court's order to High Court. Where the question in dispute in such a suit is not only whether the property has been redeemed out of the usufruct, but whether the property and the right to redeem belong to the plaintiff, and the value of the property exceeds Rs. 1,000, such suit is not cognisable by a Munsif.—*Kalian Dass v. Nawal Singh*, I. L. R., 1 All. 620. [Mar. 7, 1878.]

THE holder of a decree for money applied for the attachment, in the execution of decree, of certain moneys deposited in Court to the credit of the judgment-debtor. On 4th June 1877, the Court of first instance refused the attachment on the ground that the decree directed the sale of certain immoveable property for its satisfaction, and awarded no other relief. The order of the Court of first instance was affirmed by the lower Appellate Court on the 4th August 1877. Act X. of 1877, repealing Act VIII. of 1859 and Act XXIII. of 1864, came into force on 1st October 1877. On 13th November 1877, the decree-holder applied to the High Court for the admission of a second appeal from the order of the lower Appellate Court, on the ground that the decree had been misconstrued. Held that an appeal under the repealed Act VIII. of 1859 was admissible under Act I. of 1868, s. 6, and that the order of the lower Appellate Court was appealable under Act X. of 1877, s. 584.—*Thakur Prasad v. Ashan Ali*, I. L. R., 1 All. 668. [May 27, 1878.] See also *Rufjit Sing and others v. Meherban Koer*, I. L. R., 3 Cal. 662 [May 14, 1878]; *Murli Dhar v. Parsotam Dass and another*, I. L. R., 2 All. 91 [Nov. 28, 1878]; *Hurbans Sahai and others v. Bhairi Pershad Singh and others*, I. L. R., 5 Cal. 259 [Feb. 19, 1879]. But see *Uda Begam v. Ibrahim-ud-din*, I. L. R., 2 All. 74. [Nov. 6, 1878.]

A DEFENDANT who obtains a judgment in his favour in the Court of first instance, and who, on appeal by the plaintiff, does not appear at the hearing of the appeal, or present a petition for a re-hearing, may, under Act X. of 1877, s. 584, present a second appeal against the decree of the lower Appellate Court.—*Modalatha ex parte*, I. L. R., 2 Mad. 75. [Nov. 27, 1878.]

AN appellant, who has obtained a decree setting aside the decision of the Court of first instance, is not entitled to a further appeal to the High Court, on the ground that he is dissatisfied with some of the findings recorded in the judgment of the lower Appellate Court, an appeal from an appellate decree under s. 584 being strictly restricted to matters contained in the decree alone.—*Koylash Chunder Koosari v. Ram Lal Nag*, I. L. R., 6 Cal. 206. [May 20, 1880.]

AN order on appeal from a decree in an original suit of the nature cognizable in Mufassal Courts of Small Causes, under s. 562 of Act X. of 1877, remanding the suit for re-trial, is appealable, s. 586 of Act X. of 1877, notwithstanding, as that section applies to appeals from appellate decrees, and not to appeals from orders.—*Collector of Bijnor v. Jafar Ali Khan*, I. L. R., 3 All. 18. [June 11, 1880.]

M SUE K and J to enforce a right of pre-emption in respect of property which he alleged K had sold to J. K denied that she had sold such property to J. J set up as a defence that M had waived his right of pre-emption. The Court of first instance dismissed the suit on the ground that the alleged sale had not taken place. J appealed, making M and K respondents. The lower Appellate Court dismissed the appeal, also holding that the alleged sale had not taken place. J then appealed to the High Court, making K the respondent. Held that neither the appeal from the original decree in the suit, nor the appeal from the appellate decree therein, was admissible. Held also that the finding as to the alleged sale was one between the plaintiff and defendants in the suit, and not between the defendant-vendor and the defendant-vendee who were litigating, and would not bar adjudication of the matter in issue between them in a suit brought by the latter for the establishment of the sale.—*Jumna Singh and another v. Kamar-un-nissa*, I. L. R., 3 All. 152 (F. B.). [Aug. 12, 1880.]

WHEN the decree of a subordinate Court is under appeal to the High Court, it is open to the High Court to vary it, either in points in which it is erroneous, or in respect of matter occurring subsequently to the date of such decree which are admitted. The plaintiff obtained a decree in a partition-suit in the Subordinate Judge's Court for his share in certain joint family property.

On appeal, the decree was affirmed, and on a second appeal, the plaintiff, at the hearing of the second appeal, claimed a larger share in the family-property than he had been awarded by the decree of the Courts below. Held that the plaintiff was entitled to a share in that of the co-parcener who died *pendente lite*, and that the decree appealed from ought to be varied accordingly. *Joy Narain Giri v. Girish Chunder Myto* (I. L. R., 4 Cal. 434) distinguished. A decree for partition does not operate as a severance so long as it remains under appeal.—*Sakharam Mahadev Dange v. Hari Krishna Dange*, I. L. R., 6 Bom. 113. [Oct. 4, 1881.]

WHERE the lower Appellate Court has clearly misapprehended what the evidence before it was, and has thus been led to discard or not give sufficient weight to important evidence, and to give weight to other evidence to which it is not entitled, and has thus

been led, not into any mere incidental mistake, but totally to misconceive the case, the High Court will interfere in second appeal, though it is not the ordinary course of procedure for it to interfere in such cases with any findings of facts which have been arrived at by the lower Appellate Court. In a suit on a mortgage-bond the plaintiff's are entitled to recover the agreed rate of interest without any deduction—*Futtehma Begum* and others v. Mohamed Ausur, 1 L. R., 9 Cal. 309. [Aug. 1, 1882.]

WHERE a lower Appellate Court, instead of remanding a suit under s. 566 of the Civil Procedure Code, erroneously remands it under s. 562, and the party aggrieved by its order appeals to the High Court under cl. 28, s. 588, the High Court cannot deal with the case as if it were a first appeal from a decree. All that the High Court can do is to rectify the procedure of the lower Appellate Court, and to direct that it decide the case itself on the merits. *Badam v. Imrat* (I. L. R., 3 All. 675) distinguished. *Ramnarain v. Bhanwandin* (2 Weekly Notes, 1882, p. 104) and *Sheoamber Singh v. Lallu Singh* (Weekly Notes, 1882, p. 158) referred to.—*Sohan Lal v. Aziz-un-nissa Begam*, I. L. R., 7 All. 136. [Nov. 4, 1884.]

A JUDGE, after disposing of an appeal on the 1st March 1883, again took it up, and, on the 21st March 1883, directed the appellant to pay additional court-fees on her memorandum of appeal. On the 2nd May 1883, the appellant paid the additional court-fees under protest, and a decree was then prepared, bearing date the 1st March 1883, but it referred to, and carried into effect, the subsequent order of the 21st March and the 2nd May. *Per Mahmood, J.*, that as soon as the Judge had passed the decree of the 1st March 1883, he ceased to have any power over it, and was not competent to introduce new matters not dealt with by the judgment; that the order of the 21st March and the deposit of the 2nd May, whether right or wrong, were not proceedings to which effect could be given in the antecedent decree of the 1st March 1883; and that the decree was *ultra vires* to that extent, and was, therefore, liable to correction in second appeal under s. 584 of the Civil Procedure Code. The powers conferred by ss. 54 (a) and (c) and 55, read with s. 582 of the Civil Procedure Code, or by s. 12 of the Court-fees Act (VII. of 1870) read with cl. 2 of s. 10, are intended to be exercised before the disposal of the case, and not after it has been decided finally, so far as the Court is concerned. The powers conferred by s. 28 of the Court-fees Act cannot be exercised by an order, passed after the decision of the case to which the question of the payment of court-fees relates, and, even assuming that they can be so exercised, such an order, though it may be subject to such rules as to appeal or revision as the law may provide, cannot be given effect to by making insertions in an antecedent decree. *Per Oldfield, J.*—That the Court had power to make the order it did, inasmuch as the collection of court-fees was no part of a Judge's functions in the trial of a suit which could be said to have ceased with its determination; and the provisions of the Court-fees Act fixed no time within which the presiding Judge could exercise his power of ordering documents to be stamped, and seemed on the other hand, to contemplate the exercise of that power at any time subsequent to the receipt, filing, or use of a document, and to make the validity of the document and the proceedings relative thereto dependent on the document being properly stamped.—*Mahadei v. Ram Kishen Das*, I. L. R., 7 All. 523. [Jan. 15, 1885.]

IN a suit to obtain possession of certain property and to set aside a deed called a deed of endowment (*wakfnama*), on the ground that the defendant had fraudulently obtained its execution, the defendant pleaded (i) that the deed was a valid one, and (ii) that she was in possession of the property in satisfaction of a dower-debt, and her possession could not be disturbed so long as the debt remained unsatisfied. The Court of first instance held that the deed was invalid, but the defendant was entitled to remain in possession of the property till her dower-debt was satisfied, and the Court passed a decree which merely dismissed the suit, without embodying the finding as to the deed. On appeal by the plaintiff to the District Judge, the defendant filed objections under s. 561 of the Civil Procedure Code in regard to the first Court's decision that the deed of endowment was invalid. The Judge dismissed the plaintiff's appeal, affirming the finding as to dower, and, refusing to decide the question of the validity of the deed as being unnecessary for disposal of the claim, disallowed the defendant's objections. The defendant appealed to the High Court. *Held* by the full Bench (Oldfield and Mahmood, J.J., dissenting) that if a decree is, upon the face of it, entirely in favour of a party to a suit, such decree being the thing which by law is made appealable, and nothing else, that party has no right of appeal therefrom. If, in the judgment, of which such decree is the formal expression, findings have been recorded upon some issues against that party, and he desires to have formal effect given to them by the decree, so as to allow of his filing objections thereto under s. 561 of the Civil Procedure Code, or of appealing therefrom under s. 540, he must take

steps under s. 206 to have the decree properly brought into conformity with the judgment, so that there may be matters on the face of it to show that something has been decided against him; but if he fails to take this course, the decree, though in general terms, will stand good as finally deciding the issues raised by the pleadings upon which the ultimate determination of the cause and the decree itself rested. The findings in a judgment upon matters which subsequently turn out to be immaterial to the grounds upon which a suit is finally disposed of, as to the plaintiff's right to any portion of the relief sought by him as declared by the decree, amount to no more than *obiter dicta*, and do not constitute a final decision of the kind contemplated by s. 13 of the Civil Procedure Code. *Held* also that, in the present case, the Judge was right in holding that the question as to the validity or otherwise of the deed of endowment was wholly immaterial. (The judgment of Straight, J., in *Lachman Singh v. Mohan* (I. L. R., 2 All. 497), approved and followed. *Per* Oldfield, J., *contra*, that the decree, to agree with the judgment, and fulfil the requirements of s. 206 of the Civil Procedure Code, should contain the material points for determination arising out of the claim, and material for the decision thereon; that, if this has not been done, the defect is a good ground of appeal, notwithstanding that the decree, on its face, may be altogether in favour of the appellant, and notwithstanding that he may not have applied for amendment of the decree under s. 206, or for review of judgment; and that, in the present case, the defect in the decree would afford a good ground of appeal. *Per* Mahmood, J., that inasmuch as the provisions of s. 13 of the Civil Procedure Code relate as well to the trial of issues as to the trial of suits, and in the present case the validity or otherwise of the deed was a matter directly and substantially in issue between the parties, and was adjudicated upon, the finding of the first Court upon that issue was not a mere *obiter dictum*, but would be binding upon the defendant as *res judicata*, notwithstanding the fact that the suit against her was dismissed on the ground that she held possession of the property in lieu of dower; that whatever has the force of *res judicata* is necessarily appealable; that the word "from" as used in s. 540 or s. 584, and the expression "objection to the decree" in s. 581, refer not only to matters existing upon the face of the decree, but also to those which should have existed, but do not exist there; and, that the defendant in the present case was aggrieved or injured by the omission in the decree of the first Court, and was therefore entitled to file objections to it, and for the same reason, to appeal to the High Court from the decree of the lower Appellate Court. Also *per* Mahmood, J., that it was doubtful whether the reliefs contemplated by ss. 206 and 623 were open to the defendant; but that, even conceding that she ought to have sought her remedy under either of those sections, her neglect to do so did not make her incapable of obtaining the same result by the exercise of her right of appeal. *Anusuyabai v. Sakkaram Pandurang* (I. L. R., 7 Bom. 484), *Man Singh v. Narayan Das* (I. L. R., 1 All. 480), *Mohan Lal v. Ram Dayal* (I. L. R., 2 All. 843), *Niamat Khan v. Phadu Buldia* (I. L. R., 6 Cal. 319), and *Pan Kuar v. Bhagwant Kuar* (N. W. P., H. C. R., 1874, p. 19), referred to.—*Jamatunissa v. Lutfunissa*, I. L. R., 7 All. 606. [Feb. 21, 1885.]

WHEN a question of costs is purely in the discretion of the lower Court, no appeal will lie, but when a matter of principle is involved an appeal will lie. Where A was sued upon the allegation that he had instigated his co-defendant B to refuse to deliver up a document, for the recovery of which the suit was brought, and where no relief was prayed as against A, but the lower Courts awarded a decree in favour of the plaintiff directing A to pay half the costs of suit, *held* that the question was one of principle, and that a second appeal lay to the High Court against the decree directing A to pay such costs.—*Bunwari Lal v. Chowdhry Drup Nath Sing*, I. L. R., 12 Cal. 179. [Aug. 5, 1885.]

Second appeal on no other grounds.

585. No second appeal shall lie except on the grounds mentioned in section 584.

586. No second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees.

IN applications for review of judgments of Courts of Small Causes constituted under Act XI. of 1865, the procedure laid down in the rules contained in chap. 42 of the Code of Civil Procedure (Act X. of 1877) is to be strictly followed, without reference to the procedure relating to new trials under s. 21 of Act XI. of 1865.—*Ishan Chander Banerjee v. Lochun Gope*, 5 C. L. R. 559. [Jan. 29, 1880.]

AN order on appeal from a decree in an original suit of the nature cognizable in Mufassal Courts of Small Causes, under s. 562 of Act X. of 1877, remanding the suit for re-trial, is appealable, s. 586 of Act X. of 1877 notwithstanding, as that section applies to appeals from appellate decrees, and not to appeals from orders.—Collector of Bijnor v. Jafar Ali Khan, I. L. R., 3 All. 18. [June 11, 1880.]

A SUIT by a landholder against a tenant for Rs. 130, being the value of a moiety of the produce of a grove of mango trees held by such tenant, such amount being claimed in virtue of an agreement recorded in the *wajib-ul-ars*, and not in virtue of any custom or right, is not cognizable in the Revenue Court, but is cognizable in a Court of Small Causes, and consequently no second appeal in the suit will lie.—Sarnam Tewari v. Sakiha Bibi, I. L. R., 3 All. 37. [June 15, 1880.]

A SUIT by one decree-holder against another for the money received by the latter on a division between them of the proceeds of an execution-sale as his share of such proceeds, under the order of the Court executing the decree, is a suit of the nature cognizable in a Court of Small Causes, and consequently, where the amount of such money does not exceed five hundred rupees, no second appeal lies in such suit.—Mata Parsad v. Gauri, I. L. R., 3 All. 59. [June 22, 1880.]

ON the death of K a dispute arose among her heirs as to the succession to the share of which she was the recorded proprietor. In January 1874, V, who was not one of her heirs, and who was not a shareholder of such village, was recorded in the revenue-register as lambardar in respect of her share, and was so recorded until February 1878, when his name was expunged, and the name of B, who was one of the heirs, was recorded as the proprietor of such share. N subsequently sued B to recover Rs. 70-13-4, being the amount which he had paid on account of revenue in respect of such share during the period between January 1874 and February 1878, instituting such suit in a Civil Court (Munsif). Held that the suit was not one cognizable in a Revenue Court under s. 93 (g) of Act XVIII. of 1873, but one cognizable in a Civil Court. Held also that the suit was one for damages under s. 70 of Act IX. of 1872 within the meaning of s. 6 of Act XI. of 1865, and accordingly of the nature cognizable in a Court of Small Causes, and no second appeal in the suit would lie.—Nath Prasad v. Baij Nath, I. L. R., 3 All. 66. [June 30, 1880.]

A SUIT for money due on a contract within the meaning of Act XI. of 1865, s. 6, is none the less cognizable by a Small Cause Court, because it may be necessary to go into the accounts of both parties to see whether the amount claimed is really due or not. Dyabukee Nundun Sen and another v. Mudhoo Mutty Goopta and another (I. L. R., 1 Cal. 123; 24 W. R. 478). And therefore no second appeal lies in such a suit under Act X. of 1877, s. 586.—Asman Singh v. Doorga Roy, I. L. R., 6 Cal. 284. [July 14, 1880.]

A WAS the proprietor of nine annas of a mauza, B and his family of one anna, and C and others of the remaining six annas. B and his family having occupied and enjoyed, to the exclusion of their co-shareholders, fifty-four bighas of the mauza, failed to pay any rent in respect of such occupation. A instituted a suit against them (making C and the other holders of the six annas share defendants to the suit) to recover the sum of Rs. 412-8 as the sum justly due to him after making all proper deductions, including as well as the share of the rent of the forty-four bighas to which the six-annas shareholders were entitled to retain as proprietors of a one-anna share. Held that the facts showed an implied contract on the part of B and his family to pay to their co-shareholders whatever, upon taking an account, should appear to be due to them; and that, inasmuch as the total amount sought to be recovered in the suit by A did not exceed 500 rupees, the suit was one which might have been brought in a Small Cause Court, and therefore the plaintiff had no right of second appeal to the High Court under s. 586 of the Code of Civil Procedure.—Asman Singh v. Doorga Roy, I. L. R., 6 Cal. 284. [July 14, 1880.]

THE jurisdiction of a Small Cause Court is not ousted if a suit for damages for carrying away the produce of certain land when the defendant sets up title to the land in answer to the claim. S. 586 of the Code of Civil Procedure precludes a second appeal in a suit for damages under Rs. 500, although the suit has been instituted in the District Munsif's Court and not in a Court of Small Causes, and although a question of title has been raised by the defendant and decided. Per Turner, C.J.—When a suit is brought in a form in which it is cognizable by a Small Cause Court under Act XI. of 1865, the Court cannot decline jurisdiction if it appears that incidentally a question of title is raised which it has not jurisdiction to determine for any other purpose than the decision of the suit before it. Under such circumstances, the Court may, however, properly grant a reasonable adjournment that the question may be litigated and determined by the proper tribunal. Per Muttusami Ayyar, J.—The question, what is a suit of the nature cognizable

in Courts of Small Causes within the meaning of s. 586 of the Civil Procedure Code, has reference to the mode of adjudication and not to the *forum*, and the fact that the suit is instituted in the District Munsif's Court and not in a Court of summary jurisdiction makes no difference for the purposes of that section. If the matter adjudicated on in a suit is only incidentally in issue or cognizable, the adjudication is final, whether by a Court of concurrent or limited jurisdiction, only for the purpose and object of that suit. *Per Innes, J.*—The decree of a Small Cause Court in a case where a question of title is raised incidentally is no bar to a suit upon the title under s. 13, expl. 2, of the Civil Procedure Code, because the Small Cause Court is not competent to pass a decree upon the title.—*Manappa Mudali v. McCarthy* (S. T.), I. L. R., 8 Mad. 192. [April 29, 1901.]

THE plaintiff sued to recover from the defendant Rs. 71-3-3, alleging that the defendant had illegally levied the money on the plaintiff's land on account of enhanced summary settlement and local-fund dues. The defendant, being a minor, was represented by the Collector as his administrator. The Assistant Judge who tried the suit awarded the plaintiff's claim. The District Judge, in appeal, reduced the amount of the plaintiff's claim to Rs. 38-4-9, but upheld the decree of the first Court in other respects. The defendant thereupon filed a second appeal in the High Court. *Held* that under the Civil Procedure Code (Act X. of 1877), s. 586, no second appeal lay, as the suit was one cognizable by a Small Cause Court. Act X. of 1876, s. 15, removes suits to which the Collector is a party from the jurisdiction of the Small Cause Court; but the nature of the suit remains unaltered.—*Musa Miya Sahab v. Syad Gulam Husein*, I. L. R., 7 Bom. 100. [July 26, 1882.]

THE right of appeal given by ss. 588 and 589 of Act X. of 1877 from an order of remand, as contemplated by s. 562, is not taken away by s. 586. *Chaudhri Nanjit Singh v. Jafar Ali Khan* (I. L. R., 3 All. 18) followed.—*Mahadev Narsinh v. Bagho Keshav*, I. L. R., 7 Bom. 292. [April 19, 1883.]

WHERE a suit is brought for property wrongfully taken by the defendant praying for restoration of such property either to the plaintiff directly or to some other person wholly or partly as agent for the plaintiff, it is a "suit for property" within the meaning of the Small Cause Court Act (XI. of 1865); and if the property is moveable and of less than Rs. 500 in value, the suit is then a small cause. Accordingly, where the plaintiffs, who were co-members with the defendants of a division of a caste, and, as such, tenants-in-common with them of certain cooking vessels of less than rupees five hundred in value, were excluded by the defendants from possession and common use of the vessels, and sought for a declaration that the plaintiffs and the defendants were equally entitled to the use of the said vessels, and for restoration of the same to some third person, who should hold them to the use of the plaintiffs and defendants. *Held* that the suit was not a suit for a declaratory decree, but for the recovery of property within the meaning of the Small Cause Court Act (XI. of 1865), and, as such, was exclusively triable by a Small Cause Court. It was contended for the plaintiffs that, though actually a small cause, the suit having been instituted and dealt with in the ordinary Civil Court, a second appeal to the High Court would lie. *Held* that no second appeal would lie. A small cause is such wherever it is instituted, and the nature of the cause not being variable in any way according to the Court in which it is brought, the circumstance that it has been instituted in an ordinary Civil Court, and dealt with there, would not, for that reason, admit of a second appeal, which in such a case is expressly excluded by s. 586 of the Code of Civil Procedure (Act XIV. of 1882). The proceedings of the lower Courts were pronounced null, and the plaintiff directed to be returned for presentation in the proper Court.—*Kalián Dayál v. Kalián Narer*, I. L. R., 9 Bom. 259. [Dec. 3, 1884.]

AN objection involving a point of law as well as of fact, if not taken in the Court below, cannot be entertained in second appeal.—*Vasanji Haribhāf v. Lallu Akhu*, I. L. R., 9 Bom. 285. [Jan. 7, 1885.]

587. The provisions contained in Chapter XLI. shall apply, as far as Provisions as to second appeal may be, to appeals under this chapter, and to the execution of decrees passed in such appeals.

WHERE the lower Appellate Court omits to give reasons for its decision, the High Court will retain the case in second appeal, and either require the Judge to state his reasons, or, in the event of his absence, refer the questions to his successor for fresh trial.—*Assanullah v. Hafiz Mahomed Ali*, I. L. R., 10 Cal. 932. [June 30, 1884.]

HELD by the Full Bench (Tyrrell, J., dissenting), that the findings upon issues remanded by the High Court in second appeal cannot be challenged upon the evidence as in first appeals, but objections to these findings must be restricted to the limits within

which the original pleas in second appeal are confined. *Nivath Singh v. Bhikki Singh* (I. L. R., 7 All. 649) referred to. *Per Petheram, C.J., and Tyrrell, J.* (Straight, J., dissenting).—Ss. 565 and 566 of the Civil Procedure Code are, as far as may be, incorporated in chap. 42 of the Code relating to second appeals, and when the evidence for disposing of the real issues in the case has been taken and exists on the record, it is the duty of the High Court, on the hearing of a second appeal, to itself fix and determine such issues on the evidence on the record, and not to put the parties to the expense and delay involved by a remand. *Per Straight, J.*—S. 587, of the Civil Procedure Code does not mean that the provisions of chap. 41 relating to first appeals are to be applied indiscriminately or in their entirety to second appeals, and implies no warrant for the decision by the High Court of questions of fact in any shape or at any stage of a second appeal. *Ramnarain v. Bhawanidin* (Weekly Notes, 1882, p. 104) and *Sheoambar Singh v. Lallu Singh* (Weekly Notes, 1882, p. 158) referred to. *Per Tyrrell, J.*—The jurisdiction of Courts of second appeal in respect of questions of fact is restricted, inasmuch as the appeal may not be entertained on “grounds” of fact, but, under the circumstances of s. 566 of the Code, no less than under the abnormal circumstances contemplated by the ruling of the Full Bench in *Nivath Singh v. Bhikki Singh* (I. L. R., 7 All. 649), the High Court may take cognizance of omitted issues of fact, and must determine them if there be evidence upon the record sufficient for that purpose. An issue to be tried in this way will, with all the evidence bearing upon it, be open to consideration from any point of view that may be present to the Court on the evidence and otherwise. In cases where the Court, still acting under s. 566, has been obliged, in the absence of evidence on the record, to supplement the defect through the agency of the Court below, its jurisdiction in respect of such evidence does not become limited thereby, or by reason only of the circumstance that the evidence is accompanied by a “finding” of the inferior Court—the term “finding” being used in s. 566 in its restricted sense of an answer to the proposition referred for inquiry, and not of an award or decision of the issue before the Court.—*Balkishen v. Jasoda Kuar*, I. L. R., 7 All. 765. [June 4, 1885.]

On a second appeal the High Court awarded the plaintiff's claim with costs throughout; but the claim, as stated in the paper-book of appeal, differed from the claim as it had been stated in the plaint. *Held* that the award of the claim was to be understood as referring to the claim as stated in the plaint, and not as described in the paper-book. Ss. 579 and 587 of the Civil Procedure Code (Act XIV. of 1882) do not require the claim to be stated in the decree, so as to make such statement a part of the decree itself.—*Soude Shrinivasapa v. Krishnappa Hegde*, I. L. R., 11 Bom. 177. [Sep. 21, 1886.]

Held by the Full Bench that s. 587 of the Civil Procedure Code does not make ss. 565 and 566 applicable to second appeals, so as to enable the High Court, in cases where the lower Appellate Court has omitted to frame or try any issue or to determine any essential question of fact, to itself determine the same upon the evidence on the record; but the High Court in such cases must remit issues for trial to the lower Appellate Court. *Balkishen v. Jasoda Kuar* (I. L. R., 7 All. 765) and *Dookishen v. Bansi* (I. L. R., 8 All. 172) overruled on this point.—*Girdhari Lal v. Crawford* (W.), I. L. R., 9 All. 147. [Dec. 10, 1886.]

CHAPTER XLIII.

OF APPEALS FROM ORDERS.

Orders appealable.

588. An appeal shall lie from the following orders under this Code, and from no other such orders:—

- (1) orders under section 20, staying proceedings in a suit;
- (2) orders under section 32, striking out or adding the name of any person as plaintiff or defendant;
- (3) orders under section 36 or section 66, directing that a party shall appear in person;
- (4) orders under section 44, adding a cause of action;
- (5) orders under section 47, excluding a cause of action;
- (6) orders returning plaints for amendment or to be presented to the proper Court;

- (7) orders under section 111, setting-off, or refusing to set-off, one debt against another ;
- (8) orders rejecting applications under section 103 (in cases open to appeal) for an order to set aside the dismissal of a suit ;
- (9) orders rejecting applications under section 108, or an order to set aside a decree *ex parte* ;
- (10) orders under sections 113, 120, and 177 ;
- (11) orders under section 116 or section 245, rejecting, or returning for amendment, written statements or applications for execution of decrees ;
- (12) orders under sections 143 and 145, directing any thing to be impounded ;
- (13) orders under section 162, for the attachment and sale of moveable property ;
- (14) orders under section 168, for attachment of property, and orders under section 170, for the sale of attached property ;
- (15) orders under section 261, as to objections to draft-conveyances or draft-endorsements ;
- (16) orders under section 294, the first paragraph of section 312, or section 313, for confirming, or setting aside, or refusing to set aside, a sale of immoveable property ;
- (17) orders in insolvency-matters, under section 351, section 352, section 353, or section 357 ;
- (18) orders under section 366, paragraph two, section 367, or section 368 ;
- (19) orders rejecting applications under section 370 for dismissal of a suit ;
- (20) orders under section 371, refusing to set aside the abatement or dismissal of a suit ;
- (21) orders disallowing objections under section 372 ;
- (22) orders under section 454, section 455, or section 458, directing a next friend or guardian for the suit to pay costs ;
- (23) orders in interpleader-suits under section 473, clause (a), (b), or (d), section 475, or section 476 ;
- (24) orders under section 479, section 480, section 485, section 492, section 493, section 496, section 497, section 502, or section 503 ;
- (25) orders under section 514, superseding an arbitration ;
- (26) orders under section 518, modifying an award ;
- (27) orders of refusal under section 558 to re-admit, or under section 560 to re-hear, an appeal ;
- (28) orders under section 562, remanding a case ;
- (29) orders under any of the provisions of this Code, imposing fines, or for the arrest or imprisonment of any person, except when such imprisonment is in execution of a decree.

The orders passed in appeals under this section shall be final.

WHERE a suit has been referred to arbitration by an order of Court, and the Court afterwards gives judgment according to the award made upon such reference, such judgment is final, and no appeal lies therefrom.—1 Hay 366 (Marshall 163) ; Shaikh Elahae Buksh and others v. Shaikh Hajeef and another, 14 W. R. 33 [June 7, 1870] ; Gour Chunder Bhattacharjee v. Sodey Chunder Nundee and others, 17 W. R. 30 [Dec. 1, 1871] ; Maharajah Joymungul Singh Bahadoor v. Mohun Ram Marwaree, 23 W. R. 429 (P.C.) [March 11, 1876]. See Lalla Ishuree Pershad and others v. Hur Bhunjan Tewaree and others, 15 W. R. 9. [May 23, 1871.]

A SUIT to redeem a usufructuary mortgage of certain lands was instituted in the Munsif's Court, after the suit had been admitted, and the parties called on to produce

evidence, the Munsif ordered the plaint in the suit to be returned to the plaintiff for presentation in the proper Court on the ground that the suit should have been instituted in the Court of the Subordinate Judge, the value of the property in suit being, beyond the jurisdiction of a Munsif. *Held* that, under Act VIII. of 1859, the Munsif's order was appealable to the lower Appellate Court, and under Act X. of 1877, the lower Appellate Court's order to the High Court.—*Kalish Das v. Nawal Singh*, 1 L. R., 1 All. 620. [Mar. 7, 1878.]

WHERE an application was made for the issue of execution of decree, and the District Munsif made an order refusing execution, the decree being one passed not in a regular suit, and governed by the one-year limitation, and the Subordinate Judge on appeal reversed the Munsif's order, applying the three years' limitation, *held* by the High Court that, as Act X. of 1877, s. 588, provided that orders passed in appeal from orders under s. 244 should be final, no second appeal lay, and that the High Court could not interfere under s. 622, as the Subordinate Judge had jurisdiction to hear the appeal.—*Suryaprasada v. Vaisya Sannyasi Razu*, 1 L. R., 1 Mad. 401. [Sep. 16, 1878.]

A PERSON applying under Act X. of 1877, s. 344, must satisfy the Court that his case comes within the provisions of s. 351, and the burden of proof lies upon him. An order dismissing such an application is appealable under s. 588.—*Mumtaz Hossain v. Brij Mohun Tagore*, 1 L. R., 4 Cal. 888. [Dec. 4, 1878.] Followed in *Nubbi Buksh v. Chasni*, 1 L. R., 6 Cal. 168. [Aug. 11, 1880.]

A SUIT was instituted in September 1877, when Act VIII. of 1859 was in operation, and a decree was passed on the 2nd February 1878, after the repeal of that Act. An appeal was preferred, but, on coming on for hearing, was dismissed for default on the 31st of May, neither the appellants nor their pleader having appeared. On the 21st June, the appellants applied, under s. 558 of Act X. of 1877, to have the appeal restored, on the ground that the pleader whom they had engaged was a lunatic, and that, having engaged a pleader, they had thought it unnecessary to appear in person. The Judge rejected the application, and the applicants now appealed against the order rejecting this application. *Held* that the order of the 21st of June was made under Act X. of 1877, and was therefore open to appeal under s. 588 of that Act. *Ranjit Singh v. Meharban Koer* (2 C. L. R. 391) and *Burkut Hossain v. Majidood Nissa* (3 C. L. R. 208) cited and distinguished.—*Sheikh Elahi Buksh v. Musamat Morachoo*, 3 C. L. R. 593. [Feb. 19, 1879.]

A DECISION of a Judge directing a penalty to be enforced under the Stamp Act, the case being afterwards proceeded with, is not appealable as a decree, as it cannot be said to be a decree affecting the merits of the case or the jurisdiction of the Court. Nor can such a decision be said to be "an order as to a fine" within the meaning of Act VIII. of 1859, s. 365 (corresponding with Act X. of 1877, s. 588, cl. 29), which is not intended to apply to penalties under the Stamp Act, but only to fines which may be levied under the Code itself.—*Sonaka Chowdrain v. Bhoobunjoy Shaha*, 1 L. R., 5 Cal. 311. [May 5, 1879.]

ALTHOUGH the auction-purchaser may not apply under Act X. of 1877, s. 311, to have a sale set aside, he may be a party to the proceedings after an application has been made under that section, and then, if an order is made against him, he can appeal from such order under s. 588.—*Kanthi Ram v. Bankey Lal*, 1 L. R., 2 All. 306. [June 11, 1879.]

ALTHOUGH Act X. of 1877, s. 57, contemplates the return of the plaint, should error be patent when it is first presented, yet there is nothing in the wording of that section which forbids the return of the plaint at a later stage in the suit. Where, therefore, after the issues in a suit were framed, the Court decided that it had no jurisdiction, and returned the plaint to be presented in the proper Court, *held* that in so doing the Court acted under s. 57; and its decision, not coming within the definition of a "decree" in Act XII. of 1879, s. 2, was not appealable as such, but was appealable under Act X. of 1877, s. 588, as an order.—*Awdul Samad v. Rajindro Kishore Singh*, 1 L. R., 2 All. 357. [Aug. 15, 1879.]

WHERE, in a suit for the filing of an award made on a private reference to arbitration, the Court of first instance, holding that there was no reason to remit such award to the re-consideration of the arbitrator under the provisions of s. 520 of Act X. of 1877, or to set it aside under s. 521 of that Act, did not proceed to give judgment according to such award followed by a decree, but merely directed that such award should be filed, *held* that its order was not appealable as a decree or as an order.—*Ramadhin v. Mphesh*, 1 L. R., 2 All. 471. [Nov. 17, 1879.]

A DECREE-HOLDER, having assigned a share of her decree, applied several times jointly with such assignee for execution. On a subsequent application made by the original decree-holder alone, the Court, while granting the application, directed that the proceeds

arising from such execution only should be paid over to the co-decree-holders jointly. *Held* that the question in dispute being one between co-decree-holders, and not between the parties to the suit or their representatives as contemplated by art. c, s. 244 of the Civil Procedure Code, no appeal would lie from such order.—*Gyamonee v. Radha Romon*, I. L. R., 5 Cal. 592. [Dec. 4, 1879.]

WHERE an appeal is dismissed, under s. 556 of Act X. of 1877, for the appellant's default, the order dismissing it is not appealable.—*Nand Ram v. Muhammad Bakhsh*, I. L. R., 2 All. 616. [Jan. 7, 1880.]

AN order made by a lower Court, directing a suit to be re-admitted and registered on the file of the Court, is not appealable. Second appeals to the High Court must either come within chap. 42 or ss. 588 and 591 of Act X. of 1877.—*Hirdhamun Jha v. Jingoohor Jha*, I. L. R., 5 Cal. 111. [Mar. 18, 1880.]

ON the 25th June 1879, a Subordinate Judge made an order setting aside the sale of immovable property in the execution of a decree, from which an appeal was preferred, under Act X. of 1877, to the District Court on the 25th July 1879, before Act XII. of 1879 came into force. *Held* that, as the appeal would not have lain at all had Act XII. of 1879 been in force on the date of its institution, s. 102 of that Act did not apply; but as the appeal lay to the District Court under the law in force on that date, it was competent to dispose of it under the provisions of s. 6 of Act I. of 1868.—*Durga Prasad v. Ram Charan*, I. L. R., 2 All. 785. [Mar. 24, 1880.]

AN order made by a Subordinate Judge, dismissing an application under s. 503 for the appointment of a receiver in a suit pending before him, or declining to nominate a receiver, is an order under that section, and not under s. 505, and is therefore appealable under s. 588 of the Civil Procedure Code, as amended by Act XII. of 1879. A Subordinate Judge, if he has good grounds, may decline to appoint a receiver even after he has received the necessary authority from the District Judge under s. 505 to do so.—*Gossain Dulmir Puri v. Tekait Hetnarain*, 6 C. L. R. 467. [April 4, 1880.]

AN order refusing an application, under s. 32 of Act X. of 1877, by a person to be added as a defendant in a suit, is not appealable.—*Karman Bibi v. Misri Lal*, I. L. R., 2 All. 904. [May 27, 1880.]

AN appeal lies against an order rejecting a plaint on the ground of its being insufficiently stamped.—*Ajodhya Pershad v. Gunga Pershad*, I. L. R., 6 Cal. 249. [June 10, 1880.]

AN order on appeal from a decree in an original suit of the nature cognizable in Mufassal Courts of Small Causes, under s. 562 of Act X. of 1877, remanding the suit for re-trial, is appealable, s. 586 of Act X. of 1877 notwithstanding, as that section applies to appeals from appellate decrees, and not to appeals from orders.—*Collector of Bijoor v. Jafar Ali Khan*, I. L. R., 3 All. 18. [June 11, 1880.]

AN order refusing to grant an application to be made an insolvent is appealable under cl. 17, s. 588 of the Code of Civil Procedure. Such an order must be considered to be one made under s. 531. *Juggutjeeban Goopto v. Harocoomar Pal* (I. L. R., 5 Cal. 719) dissented from.—*Nubbi Buksh v. Chasni*, I. L. R., 6 Cal. 168. [Aug. 11, 1880.]

THERE is no appeal from an order made under Act X. of 1877, s. 351, refusing to grant an application to be made an insolvent. The appeal allowed under s. 585, cl. 17, so far as an order under s. 351 is concerned, is on behalf of the judgment-creditor only.—*Juggutjeeban Goopto v. Haro Coomar Pal*, I. L. R., 5 Cal. 719. [Mar. 8, 1880.] Dissented from in *Nubbi Buksh v. Chasni*, I. L. R., 6 Cal. 168. [Aug. 11, 1880.]

By a decree in an administration-suit, A was appointed receiver "to manage the estate." A died, and by a subsequent order B was appointed receiver. One of the defendants in the suit applied to have B removed from the office of receiver on the ground of his alleged mismanagement of the estate. The application was refused. *Held* that the order of refusal was appealable, whether the former Code or the present Code of Civil Procedure was deemed to be applicable, being an order made in respect of a question arising between the parties to a suit relating to the execution of the decree.—*Mithibai v. Limji Nowroji Banaji*; *Harrivallubhdas Calliandás v. Ardasar Framji Moos*, I. L. R., 5 Bom. 45. [Dec. 3, 1880.]

THE lower Appellate Court (Subordinate Judge) decided on appeal by the defendants from the decree of the Court of first instance (Munsif) that the Court of first instance had no jurisdiction to entertain the suit, as the value of the subject-matter of the suit exceeded the pecuniary limits of its jurisdiction; and ordered that "the appellant's appeal be decreed, the decision of the Munsif be reversed, and the record of the case be sent to the

Munsif to return the plaint to the plaintiff for presentation to the proper Court." The plaintiff appealed to the High Court from such order as an order returning a plaint to be presented to the proper Court. *Held* that such order could not be regarded as one to which art. 6, s. 588 of Act X. of 1877, was applicable. That relates to orders returning plaints for amendment or to be presented to the proper Court passed by a Court of first instance, and to an order by an Appellate Court upon an appeal to it from the decree of a Court of first instance on general grounds. The plaintiff's proper course was to have preferred a second appeal.—*Bindeshri Chaubey v. Nandu*, I. L. R., 3 All. 456. [Jan. 28, 1881.]

MATTERS in dispute were referred to arbitration without the intervention of the Court. An award was made, and upon an application under s. 525 of the Civil Procedure Code to file the award, one of the parties showed cause why the award should not be filed, and the Subordinate Judge held the objection to be good. *Held* that no appeal lay.—*Sree Ram Chowdhry v. Donobundhoo Chowdhry*, I. L. R., 7 Cal. 490. [May 25, 1881.]

AN Appellate Court rejected the application of the legal representative of a deceased sole plaintiff-appellant to enter his name in the place of such appellant on the record, on the ground that such application had not been made within the time limited by law, and passed an order that the suit should abate. *Held* that the order of the Appellate Court, passed under the first paragraph of s. 366 of Act X. of 1877, not being appealable under cl. 18, s. 588, of that Act, nor being a decree within the terms of s. 2, from which a second appeal would lie, was not appealable.—*Ahmad Ata v. Mata Badal Lal*, I. L. R., 3 All. 844. [June 7, 1881.]

THE Court of first instance made an order returning the plaint in a suit to be presented to the proper Court, on the ground that it was not competent to try such suit. On appeal from such order the Appellate Court, holding that the Court of first instance was competent to try such suit, made an order "decreeing the appeal." It subsequently made an additional order directing that the case "should be returned for re-trial." On appeal to the High Court from such additional order, *held* that the appeal would not lie, as it was in reality one from an order passed in appeal from an order returning a plaint, which, under the last clause of s. 588 of Act X. of 1877, was final, and not an appeal from an order remanding a case under s. 562, the character of the original order of the Appellate Court not being altered by the passing of the additional order.—*Kishna Ram v. Narsingh Sevak Singh*, I. L. R., 3 All. 855. [June 20, 1881.]

AN order for attachment and sale of property in execution of a decree is an order "of the same nature with" an order made in the course of a suit for attachment of the debtor's property. The latter order is appealable under s. 588, cl. r, of the Code of Civil Procedure. It follows that an order for attachment and sale in execution of a decree is (according to the requirement of s. 588, cl. j) "of the same nature with appealable orders made in the course of a suit," and therefore is appealable under that section.—*Polokdhari Rai v. Radha Persad Singh*, I. L. R., 8 Cal. 28. [June 23, 1881.]

AN allottee, under a private partition, sued to stay subsequent partition proceedings brought under Reg. XIX. of 1814, and to have his possession confirmed. The defendants objected to the valuation of the suit, and to the suit being heard by the Civil Courts, no proceedings having first been instituted before the Revenue Authorities. *Held* that such a suit should be considered to be one for a declaratory decree, or for something in the nature of an injunction, and that, therefore, the plaint should not be stamped according to the value of the entire estate. That the question, whether the Collector would have brought the lands to partition, depended upon whether they were held "in common tenancy;" if they were not so held, the Collector would be only competent to make an assignment of the revenue in proportion to the several portions of the land held by the shareholders. That a private partition is no bar to proceedings in the Revenue Courts under s. 30 of Reg. XIX. of 1814. A Munsif dismissed a suit, on the ground that, if it had been properly valued, it would not have come within his jurisdiction. The District Judge affirmed the Munsif's judgment, and directed the plaint to be returned for presentation to the proper Court under s. 57 of the Civil Procedure Code. This was not done. *Held* that a second appeal would lie. *Ajoodhia Lal v. Gumai Lal* (2 C. L. R. 134) approved. *Ajoodhya Pershad v. Kristo Dyal* (15 W. R. 165) dissented from.—*Jaynath Roy v. Lal Bahadoor Singh*, I. L. R., 8 Cal. 126. [Aug. 19, 1881.]

AFTER a decree had been made *ex parte*, the defendant applied to have it set aside. The Subordinate Judge refused the application, but his order was reversed by the District Judge. *Held* that the order of the District Judge was final under s. 588, and that no second appeal would lie; nor would the Court interfere under s. 622 of the Code.—*Aubinaah Chunder Mookerjee v. Martin*, I. L. R., 8 Cal. 832. [April 13, 1882.]

A DISTRICT Court transferred for trial a suit instituted in a Court subordinate to it to another Court subordinate to it. The Court in which the suit was instituted was not the one in which the suit should have been instituted, and consequently the Court to which it was transferred made an order dismissing it, and directing the return of the plaint for presentation to the proper Court. *Held* that such order must be taken to have been passed under s. 57 of the Civil Procedure Code, and was therefore appealable under s. 588 (6); and that the defect of jurisdiction arising out of the institution of the suit in the wrong Court was not cured by the transfer of the suit.—*Fachaoni Awaathi v. Ilah Bakhsh*, I. L. R., 4 All. 478. [May 30, 1882.]

AN order under s. 97 of the Civil Procedure Code, dismissing a suit, on its being found that the summons has not been served on the defendant, in consequence of the failure of the plaintiff to pay the court-fee leviable for such service, is not appealable.—*Lucky Churn Chowdhry v. Budurrunnissa*, I. L. R., 9 Cal. 627. [Aug. 15, 1882.]

S. 588, Act X. of 1877, restricting appeals against orders, does not apply to prevent an appeal to the High Court from the order of a Judge of that Court.—*Hurriah Chunder Chowdhry v. Kalisunderi Sibi*, I. L. R., 9 Cal. 482. [Nov. 16, 1882.]

THE right of appeal given by ss. 588 and 589 of Act X. of 1877 from an order of remand, as contemplated by s. 562, is not taken away by s. 588. *Cnauthri Ranjit Singh v. Jafar Ali Khan* (I. L. R., 3 All. 18) followed.—*Manadev Narsingh v. Ragho Keshav*, I. L. R., 7 Bom. 292. [April 19, 1883.]

WHERE a lower Appellate Court, instead of remanding a suit under s. 566 of the Civil Procedure Code, erroneously remands it under s. 562, and the party aggrieved by its order appeals to the High Court, under cl. 28, s. 588, the High Court cannot deal with the case as if it were a first appeal from a decree. All that the High Court can do is to rectify the procedure of the lower Appellate Court, and to direct that it decide the case itself on the merits. *Budam v. Imrat* (I. L. R., 3 All. 675) distinguished. *Ramnarin v. Bhawanidin* (2 Weekly Notes, 1882, p. 104) and *Sheoamber Singh v. Lallu Singh* (Weekly Notes, 1882, p. 188) referred to.—*Sohan Lal v. Aziz-un-nissa Begam*, I. L. R., 7 All. 136. [Nov. 4, 1884.]

Per Petheram, C.J., and Gldfield, Brodhurst, and Duthoit, JJ.—An order passed under the first clause of s. 312 of the Civil Procedure Code, after an objection made under the provisions of s. 311 has been disallowed, is appealable under art. 16 of s. 588. *Per Mahmood, J.*—An application made under s. 311 can be disposed of only under s. 312, and if the Court rejects the objection to the sale, the order must be regarded as an order “refusing to set aside a sale of immoveable property” under the 1st para. of s. 312, and therefore appealable as falling under the purview of art. 16 of s. 588. *Lalman v. Russu Lal* (Weekly Notes, 1882, p. 117) and *Rajan Kumar v. Lalto Prasad* (Weekly Notes, 1883, p. 178) dissented from by Mahmood, J.—*Pota Ram v. Khub Chaud*, I. L. R., 7 All. 253. [Dec. 13, 1884.]

IN a case where neither of the parties desired to have a local investigation, though suggested by the Court, the lower Court dealt with the case on the materials before it, and made a decree. On appeal the Appellate Court remanded the case for the purpose of a local investigation being held at the cost, in the first instance, of the plaintiff. The lower Court thereupon made an order that the plaintiff should deposit the costs of the local investigation, and on default being made by the plaintiff, it dismissed the suit. The order of remand was found to be invalid as made without jurisdiction. *Held* that all proceedings taken by the Court of first instance, after the remand, and pending the hearing of the appeal against the remand order, were null and void, inasmuch as the jurisdiction of that Court to hear the case upon remand depended upon the validity of the remand order. An appeal, therefore, lay from the order of remand, notwithstanding the Court of first instance had subsequently made what purported to be a final decree in the case.—*Jatinga Valley Tea Company v. Chera Tea Company*, I. L. R., 12 Cal. 45. [June 19, 1885.]

S. 547 of the Code of Civil Procedure (Act XIV. of 1882), when read with cl. 8 of s. 588, does not give a right of appeal to a judgment-debtor whose application to set aside a sale of his property has been dismissed under s. 102, and whose application to set the dismissal aside has been refused under s. 103. S. 547 is not intended to confer any rights of appeal not expressly given elsewhere by the Code.—*Ningappa v. Gangawa*, I. L. R., 10 Bom. 438. [Nov. 26, 1885.]

IN a suit for pre-emption, based on the *wajid-ul-ars* of a village, the Court of first instance dismissed the claim on the ground that no right of pre-emption had been proved to exist in the village. The lower Appellate Court, dissenting from this opinion, reversed the first Court's decree, and remanded the case under s. 562 of the Civil Procedure Code for a decision on the remaining question of fact, *viz.*, the amount of the consideration for

the sale. In appeal from the order of remand, the High Court, on the 3rd January 1884, observed that it was not disposed to interfere with the finding of fact that the plaintiff had a right of pre-emption, and accordingly dismissed the appeal, but added that the Judge was in error in remanding the case under s. 562 of the Code; that his order must so far be set aside; and that he should proceed under s. 565 or s. 566 as might be applicable. The Judge, on receipt of this order, replaced the case on his file, remitted an issue to the Court of first instance under s. 566 as to the amount of consideration, and, accepting the first Court's finding upon that issue, decreed the plaintiff's claim. In second appeal by the defendants the High Court was of opinion that the Judge had disposed of the case upon a condition of things which the plaintiffs had never asserted, inasmuch as he had treated the right of pre-emption which was in issue as one arising from custom, and not, as alleged by the plaintiffs, as arising from a contract between the ancestors of the parties. All the evidence necessary to the determination of the case was on the record. *Held*, by the Full Bench, that the defendants were not prevented by the operation of the High Court's order of the 3rd January 1884 from disputing the right of pre-emption, inasmuch as that order was a decision of a merely interlocutory character passed in the same suit, and the questions of fact involved therein were decided only so far as was necessary for the purpose of passing the order, and it could not be regarded as determining the main question in the suit, which was still open, and must be decided in the final decree in the suit. *Per* Straight, J., that the jurisdiction of the High Court in appeal under s. 588 of the Code from the Judge's order of remand was, like the jurisdiction of the Judge in passing the order, limited by the terms of s. 562; and hence the remark made in the High Court's order dealing with the plaintiffs' right of pre-emption could only be regarded as an *obiter dictum*, and not as determining any question as to the pre-emptive right. *Held* per Potheram, C.J., and Oldfield and Tyrrell, J.J., that the High Court was competent, in second appeal from the Judge's decree, to look into the evidence already on the record for the purpose of finding whether a right of pre-emption existed, in fact, in the village, if the evidence for answering this question was already on the record, and that, in such a case, the question need not be referred to the Court of first appeal. *Bal Kishen v. Jasoda Kuar* (I. L. R., 7 All. 765) referred to. *Per* Straight and Brodhurst, J.J., *contra*. *Bal Kishen v. Jasoda Kuar* (I. L. R., 7 All. 765) referred to.—*Deekishen v. Bansil*, I. L. R., 8 All. 172. [Jan. 22, 1886.]

THE Court which passed a certain decree ordered execution thereof to be stayed pending appeal, on the debtor's furnishing security to the amount of Rs. 70,000, under the provisions of s. 545 of the Code of Civil Procedure. The debtor objected to the amount of security required, and appealed to the High Court on that ground. The decree-holder contended that no appeal lay. *Held* that the order was appealable. *Held* also on the facts that the security required was excessive.—*Udeyadeta Deb v. Gregson*, I. L. R., 12 Cal. 624. [Feb. 16, 1886.]

No appeal lies under any of the provisions of s. 588 of the Civil Procedure Code from an order under s. 44, rule a, rejecting an application for leave to join another cause of action with a suit for the recovery of immovable property. In a plaint filed in the Court of a Subordinate Judge the plaintiff claimed to recover possession of a house, together with some grain which was stored in it. The plaintiff applied to the Subordinate Judge for leave under s. 44, rule a of the Civil Procedure Code, to join the claim for grain with the claim for possession of the house. The Subordinate Judge refused leave, and returned the plaint, with directions that the plaintiff should institute two suits for recovery of the house and the grain, respectively, in the Court of the Munsif. *Held* that the Subordinate Judge's order was substantially an order rejecting the plaint, on the ground that the plaintiff had joined a cause of action with a suit for recovery of immovable property; that although this might have been a misapplication of s. 44, rule a of the Code, its effect was to reject the plaint; that such an order was a decree with reference to the definition in s. 2, and was appealable as such to the District Judge; and that therefore a second appeal lay in the case to the High Court, and that Court was not competent to interfere in revision under s. 622.—*Bandhan Singh v. Solhu*, I. L. R., 8 All. 191. [Feb. 18, 1886.]

AN order rejecting an application under s. 32 of the Civil Procedure Code to be made a party to a suit is not appealable under cl. 2, s. 588.—*Abirunissa Khatoon v. Komurunissa Khatoon*, I. L. R., 13 Cal. 100. [April 13, 1886.]

S. 15 of the Letters Patent of the High Court at Madras being controlled by s. 588 of the Code of Civil Procedure, no appeal lies from the order of a single Judge of the High Court made under s. 592 of the Code of Civil Procedure rejecting an application for leave to appeal *in forma pauperis*.—*In re Rajagopal*, I. L. R., 9 Mad. 447. [Aug. 3, 1886.]

What Courts to hear appeals.

589. An appeal from any order specified in section 588, clauses (15), (16), and (17), shall lie to the High Court.

When an appeal from any other order is allowed by this chapter, it shall lie to the Court to which an appeal would lie from the decree in the suit in relation to which such order was made, or, when such order is passed by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court.

An order on appeal from a decree in an original suit of the nature cognizable in Mufassal Courts of Small Causes, under s. 562 of Act X. of 1877, remanding the suit for retrial, is appealable, s. 586 of Act X. of 1877 notwithstanding, as that section applies to appeals from appellate decrees, and not to appeals from orders.—*Collector of Bijnor v. Jafar Ali Khan*, I. L. R., 3 All. 18. [June 11, 1880.]

590. The procedure prescribed in Chapter XLI shall, so far as may be, apply to appeals from orders under this Code, or under any special or local law in which a different procedure is not provided.

WHERE a lower Appellate Court, instead of remanding a suit under s. 566 of the Civil Procedure Code, erroneously remands it under s. 562, and the party aggrieved by its order appeals to the High Court under cl. 28, s. 588, the High Court cannot deal with the case as if it were a first appeal from a decree. All that the High Court can do is to rectify the procedure of the lower Appellate Court, and to direct that it decide the case itself on the merits. *Badam v. Imrat* (I. L. R., 3 All. 675) distinguished. *Ramnarain v. Bhanwaidin* (2 Weekly Notes, 1882, p. 104) and *Sheoamber Singh v. Lallu Singh* (Weekly Notes, 1882, p. 158) referred to.—*Sohan Lal v. Aziz-un-nissa Begam*, I. L. R., 7 All. 196. [Nov. 4, 1884.]

591. Except as provided in this chapter, no appeal shall lie from any order passed by any Court in the exercise of its original or appellate jurisdiction; but if any decree be appealed against, any error, defect, or irregularity in any such order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

An order made by a lower Court, directing a suit to be re-admitted and registered on the file of the Court, is not appealable. Second appeals to the High Court must either come within Act X. of 1877, chap. 12, or ss. 588 and 591.—*Hirdhamun Jha v. Dinghoor Jha*, I. L. R., 5 Cal. 711. [Mar. 18, 1880.]

In a suit for rent, where the defendant alleged that a person not on the record had a joint interest with the plaintiff in the property in respect of which the rent was due, *held*, where the plaintiff disputed this, and objected to such course being taken, that it was improper to add such person as co-plaintiff, and that, if added at all, it should be as defendant, in order that the issue between him and the plaintiff might be properly tried. *Held* also that if such a case an appeal lies under s. 591 of the Civil Procedure Code.—*Googlee Sahop v. Premiall Sahoo*, I. L. R., 7 Cal. 148. [April 21, 1881.]

THE High Courts in India possess the power of enforcing obedience to their orders by attachment for contempt. An order for attachment for contempt is not an order in exercise of the High Court's civil jurisdiction, and, therefore, does not come within the provision of s. 591 of the Civil Procedure Code. Contempts are in the nature of offences, and, therefore, under s. 15 of the Letters Patent, 1865, an appeal lies from an order of committal for contempt. In dealing with an appeal from such an order, the Appellate Court will not go behind the order the disobedience to which constitutes the contempt.—*Navivahoo v. Narotamdás*, I. L. R., 7 Bom. 5. [Sep. 28, 1882.]

UNDER s. 622 of the Code of Civil Procedure, interlocutory orders passed under s. 387 refusing applications for the issue of a commission to examine witnesses, or, under s. 180, directing the production of documents, cannot be revised.—*In re Nizam of Hyderabad*, I. L. R., 2 Mad. 266. [Feb. 22, 1886.]

CHAPTER XLIV.

OF PAUPER APPEALS.

592. Any person entitled under this Code or any other law to prefer an appeal, who is unable to pay the fee required for the petition of appeal, may, on presenting an application accompanied by a memorandum of appeal, be allowed to appeal as a pauper, subject to the rules contained in Chapters XXVI., XLI., XLII., and XLIII., in so far as those rules are applicable.

Who may appeal as pauper. Provided that the Court shall reject the application, unless, upon a perusal thereof, and of the judgment and decree against which the appeal is made, it sees reason to think that the decree appealed against is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

No appeal lies under Act X. of 1877 from an order made under that Act rejecting an application for permission to sue as a pauper.—*Collis v. Manohar Das*, I. L. R., 1 All. 745 (F.B.). [July 16, 1878.]

AN application for permission to appeal as a pauper was presented, not by the applicant personally, but by his pleader, and was on that ground rejected. Held, on an application to the High Court for revision, that s. 622 of Act X. of 1877 did not apply to a proceeding of so purely an interlocutory a character as mentioned in s. 592, and such application, therefore, could not be entertained.—*Harsaran Singh v. Muhammad Raza*, I. L. R., 4 All. 91. [Aug. 1, 1881.]

AN application for leave to appeal *in formâ pauperis*, under s. 592 of the Code of Civil Procedure, must be made by the party in person, subject to the exemption contained in s. 404 of the Code of Civil Procedure.—*In re Narisi*, I. L. R., 8 Mad. 504. [May 1, 1885.]

S. 15 of the Letters Patent of the High Court at Madras being controlled by s. 588 of the Code of Civil Procedure, no appeal lies from the order of a single Judge of the High Court made under s. 592 of the Code of Civil Procedure rejecting an application for leave to appeal *in formâ pauperis*.—*In re Rajagopal*, I. L. R., 9 Mad. 447. [Aug. 3, 1886.]

A PLAINTIFF who has obtained leave to sue *in formâ pauperis*, and has been successful in obtaining a decree for a portion of his claim, but has failed as to the other portions, is not entitled on an appeal by the defendant to be heard *in formâ pauperis* on cross appeal as to the portion of his claim decided against him in the lower Court.—*In the Matter of Brojeswari Dasi v. Guru Churn Das*, I. L. R., 11 Cal. 735. [Aug. 28, 1885.]

593. The inquiry into the pauperism of the applicant may be made

Inquiry into pauperism. either by the Appellate Court or by the Court against whose decision the appeal is made under the orders of the Appellate Court :

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court against whose decree the appeal is made, no further inquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees special cause to direct such inquiry.

CHAPTER XLV.

OF APPEALS TO THE QUEEN IN COUNCIL.

594. In this chapter, unless there be something repugnant in the subject or context, the expression "decree" includes "Decree" defined. also judgment and order.

HELD that the High Court has not any power, under Act X. of 1877, or cl. 81 of the Letters Patent, to grant leave to appeal to Her Majesty in Council from an order of the

Court remanding a suit for re-trial: The provisions of cl. 31 of the Letters Patent are repealed by the Code, and Act VI. of 1874 which preceded it.—*Tatley v. Jai Shankar*, I. L. R., 1 All. 726. [June 14, 1878.]

595. Subject to such rules as may, from time to time, be made by Her Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained, an appeal shall lie to Her Majesty in Council—

(a) from any final decree passed on appeal by a High Court or any other Court of final appellate jurisdiction;

(b) from any final decree passed by a High Court in the exercise of original civil jurisdiction, and

(c) from any decree, when the case, as hereinafter provided, is certified to be a fit one for appeal to Her Majesty in Council.

An order of the High Court directing execution to proceed is not a "final" decree, judgment, or order within the meaning of cl. a, s. 595 of the Code of Civil Procedure, Act X. of 1877.—*Jogessur Sabai t. Mussumut Muracko Koor*, 1 C. L. R. 354. [Dec. 21, 1877.]

The High Court has not any power, under Act X. of 1877, or cl. 31 of the Letters Patent (which is repealed by Acts VI. of 1874 and X. of 1877), to grant leave to appeal to the Privy Council from an order of the Court remanding a suit for re-trial.—*Tatley v. Jai Shankar*, I. L. R., 1 All. 726. [June 14, 1878.]

The District Judge of Ghazipur re-called to his own file the proceedings in the execution of a decree which were pending in the Court of the Subordinate Judge of Shahabad, and disallowed an application for the execution of the decree which had been preferred to that Judge. The High Court, on appeal from the order of the District Judge, annulled his order as void for want of jurisdiction, and remitted the case in order that the application might be disposed of on its merits, directing that the record of the case should be returned to the Subordinate Judge of Shahabad. On an application for leave to appeal to Her Majesty in Council from the order of the High Court, held that such order was in the nature of an interlocutory order, and was not one from which the High Court could or ought to grant leave to appeal to Her Majesty in Council.—*Palak Dhari Rai v. Badha Prasad Singh*, I. L. R., 2 All. 65. [Nov. 21, 1878.]

CERTAIN persons interested in an award applied under s. 525 of the Civil Procedure Code to have it filed in Court. The Court made an order under s. 526 "that the claim of the plaintiffs be decreed." The defendants appealed to the High Court from this "decree." The High Court held that the appeal would not lie; and suggested to the plaintiffs to apply to the lower Court to give judgment according to the award, and a decree to follow it. Thereupon the plaintiffs made an application to the lower Court of the nature suggested, but styled it one for review of judgment. The lower Court granted the so-called review of judgment. The defendants appealed from the order of the lower Court, contending that the "review of judgment" had been improperly granted. On the 23rd June 1880, the High Court held that the order of the lower Court was not appealable, not being one passed on review of judgment, but on application to give judgment and decree in accordance with an award which had been filed in Court. The defendants applied for leave to appeal to Her Majesty in Council from the order of the High Court on the 23rd June 1880. Held that such order was not a "final decree" within the meaning of s. 595 (a) of the Civil Procedure Code, and therefore it was not appealable to Her Majesty in Council.—*Ramadhin Malton v. Ganesh*, I. L. R., 4 All. 288. [Jan. 30, 1882.]

A **CANDIDATE** at an examination for pleaderships, a mistake in the computation of his marks having been made, was erroneously declared qualified for admission as a vakil of the High Court by a Government Notification. The mistake having been discovered, such Notification was, so far as he was concerned, cancelled. He then petitioned the High Court in the matter, and was informed by it that his name must be excluded from such Notification, as he had not qualified by obtaining the requisite number of marks. The candidate having applied for leave to appeal to Her Majesty in Council, held that chap. 45 of the Civil Procedure Code had no application, and the matter was not one in which the High Court was concerned to grant or refuse leave to appeal to Her Majesty in Council.—In the Matter of the Petition of Sukh Nandan Lal, I. L. R., 9 All. 163. [Jan. 17, 1884.]

AN order passed on appeal by a High Court determining a question mentioned in s. 244 of Act X. of 1877 is a final "decree" within the meaning of s. 595 of that Act. *Held*, therefore, where such an order involved a claim or question relating to property of the value of upwards of ten thousand rupees, and reversed the decisions of the lower Courts, that notwithstanding the value of the subject-matter of the suit in which the decree was made in the Court of first instance was less than that amount, such order was appealable to Her Majesty in Council.—*Ram Kirpal Shukul v. Rup Kuar*, I. L. R., 3 All. 633. [Mar. 14, 1884.]

WHERE the High Court reverses the decree of the Court below, and remands the case for retrial on the merits, and for a new decree to be passed by the Court below, no appeal lies as a matter of right, under s. 595 of the Code of Civil Procedure (Act XIV. of 1882), to the Privy Council, albeit the value of the subject-matter admittedly exceeds Rs. 10,000, as such a decree of the High Court is not a final, but an interlocutory, decree. In such a case a certificate should first be obtained under cl. c of the section that the case is a fit one for appeal to Her Majesty in Council.—*Mahant v. Caudasama*, I. L. R., 8 Bom. 548. [1884.]

LEAVE to appeal to Her Majesty in Council granted in one of six suits directed to be heard together, although the amount involved in such suit was under the appealable value; there being an important question of law, which did not arise in the five other suits, the suit, however, involving other questions of law common to all the six suits; such suits having been, by agreement of counsel, heard upon the same evidence, and concluded by the same judgment; five of such suits being appealable as of right, and the aggregate amount in the six suits being considerably more than the appealable value.—*Byjnath v. Graham*, I. L. R., 11 Cal. 740. [Aug. 31, 1885.]

Value of subject-matter.

596. In each of the cases mentioned in clauses

(a) and (b) of section 595,

the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the matter in dispute on appeal to Her Majesty in Council must be the same sum or upwards;

or the decree must involve, directly or indirectly, some claim or question to, or respecting, property of like amount or value;

and where the decree appealed from affirms the decision of the Court immediately below the Court passing such decree, the appeal must involve some substantial question of law.

A and B purchased the same properties, deriving the title through different persons. The value of the properties with mesne-profits was over Rs. 10,000. B granted two partition-decrees of the properties to different persons. A was, therefore, obliged to bring two suits for the recovery of the properties, and the value of the subject-matter in each suit was less than Rs. 10,000. *Held* that an appeal would lie to the Privy Council.—*Joogul Kishore v. Jotondro Mohun Tagore*, I. L. R., 8 Cal. 210. [Jan. 6, 1882.]

AN order passed on appeal by a High Court determining a question mentioned in s. 244 of Act X. of 1877 is a final "decree" within the meaning of s. 595 of that Act. *Held*, therefore, where such an order involved a claim or question relating to property of the value of upwards of ten thousand rupees, and reversed the decisions of the lower Courts, that notwithstanding the value of the subject-matter of the suit in which the decree was made in the Court of first instance was less than that amount, such order was appealable to Her Majesty in Council.—*Ram Kirpal Shukul v. Rup Kuar*, I. L. R., 3 All. 633. [Jan. 17, 1884.]

LEAVE to appeal to Her Majesty in Council granted in one of six suits directed to be heard together, although the amount involved in such suit was under the appealable value; there being an important question of law, which did not arise in the five other suits, the suit, however, involving other questions of law common to all the six suits; such suits having been, by agreement of counsel, heard upon the same evidence, and concluded by the same judgment; five of such suits being appealable as of right, and the aggregate amount in the six suits being considerably more than the appealable value.—*Byjnath v. Graham*, I. L. R., 11 Cal. 740. [Aug. 31, 1885.]

THE intention of the Legislature as expressed in s. 633 of the Civil Procedure Code was that the High Court might frame rules as to how its judgments should be given, whether orally or in writing, or according to any mode which might appear to it best in the

interests of justice. The section does not merely give the High Court power to direct that judgments shall be recorded in a particular book, or with a particular seal. Rule 9 of the rules made under s. 633 in March 1885 is therefore not *ultra vires* of the Court, and it modifies the provisions of s. 574 in their application to judgments of the High Court. With reference to the terms of rule 9, it is not necessary, in a case where the High Court substantially adopts the whole judgment of the Court below, to go through the formality of re-stating the points at issue, the decision upon each point, and the reasons for the decision. *Per* Edge, C.J.—Apart from rule 9, it never was intended that s. 574 of the Code should apply to cases where the High Court, having heard the judgment of the Court below and arguments thereon, comes to the conclusion that both the judgment and the reasons, which it gives are completely satisfactory and such as the High Court itself would have given. Assuming the provisions of s. 574 to be applicable, a judgment of the High Court stating merely that the appeal must be dismissed with costs and the judgment of the first Court affirmed, and that it was unnecessary to say more than that the Court agreed with the Judge's reasons, is a substantial compliance with those provisions. The judgment of the High Court in a first appeal was as follows: "This appeal must, in my opinion, be dismissed with costs, and the judgment of the first Court affirmed; and I do not think it necessary to say more than that we agree with the Judge's reasons." The appellant applied for leave to appeal to Her Majesty in Council on the ground that the requirements of s. 574 of the Civil Procedure Code had not been complied with. *Held* by the Full Bench that the objection involved no substantial question of law, and that the application for leave to appeal must therefore be rejected.—*Sundar Bibi v. Bisheshwar Nath*, I. L. R., 9 All. 93. [Nov. 15, 1886.]

Bar of certain appeals.

597. Notwithstanding anything contained in section 595,

no appeal shall lie to Her Majesty in Council from the judgment of one Judge of a High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the High Court at the time being;

and no appeal shall lie to Her Majesty in Council from any decree which, under section 586, is final.

598. Whoever desires to appeal under this chapter to Her Majesty in

Application to Court Council must apply by petition to the Court whose whose decree complained of. decree is complained of.

A on the 8th September 1885 filed his petition of appeal to Her Majesty in Council against a decree obtained against him by B on the 19th May 1885. On the 11th September 1885 A's attorney received for approval from the Registrar the usual draft notice calling upon B to show cause why the case was not a fit and proper one for appeal to Her Majesty in Council; this draft notice was never returned as approved or otherwise to the Registrar, and no further steps were taken to prosecute the appeal. On the 1st April 1886 B applied to have the appeal struck off for want of prosecution. *Held* that he was entitled to the order.—*Moorajee Poonja v. Visranjee Visenjee*, I. L. R., 12 Cal. 658. [April 14, 1886.]

Time within which application must be made.

599. Such application must ordinarily be made within six months from the date of such decree.

But if that period expires when the Court is closed, the application may be made on the day that the Court re-opens.

A on the 8th September 1885 filed his petition of appeal to Her Majesty in Council against a decree obtained against him by B on the 19th May 1885. On the 11th September 1885 A's attorney received for approval from the Registrar the usual draft notice calling upon B to show cause why the case was not a fit and proper one for appeal to Her Majesty in Council; this draft notice was never returned as approved or otherwise to the Registrar, and no further steps were taken to prosecute the appeal. On the 1st April 1886 B applied to have the appeal struck off for want of prosecution. *Held* that he was entitled to the order.—*Moorajee Poonja v. Visranjee Visenjee*, I. L. R., 12 Cal. 658. [April 14, 1886.]

600. Every petition under section 598 must state the grounds of appeal, Certificate as to value or and pray for a certificate, either that, as regards fitness, amount or value and nature, the case fulfils the requirements of section 596, or that it is otherwise a fit one for appeal, to Her Majesty in Council.

Upon receipt of such petition, the Court may direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

LEAVE to appeal to Her Majesty in Council granted in one of six suits directed to be heard together, although the amount involved in such suit was under the appealable value there being an important question of law, which did not arise in the five other suits, the suit, however, involving other questions of law common to all the six suits; such suits having been, by agreement of counsel, heard upon the same evidence, and concluded by the same judgment; five of such suits being appealable as of right, and the aggregate amount in the six suits being considerably more than the appealable value.—*Byjnath v. Graham*, I. L. R., 11 C.M. 740. [Aug. 31, 1885.]

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Effect or refusal of certificate.

601. If such certificate be refused, the petition shall be dismissed:

Provided that, if the decree complained of be a final decree passed by a Court other than a High Court, the order refusing the certificate shall be appealable, within thirty days from the date of the order, to the High Court, to which the former Court is subordinate.

602. If the certificate be granted, the applicant shall, within six months from the date or the decree complained of or within Security and deposit required on grant of certificate. six weeks from the grant of the certificate, whichever is the later date,

- (a) give security for the costs of the respondent, and
- (b) deposit the amount required to defray the expense of translating, transcribing, indexing, and transmitting to Her Majesty in Council a correct copy of the whole record of the suit, except
 - (1) formal documents directed to be excluded by any order of Her Majesty in Council in force for the time being;
 - (2) papers which the parties agree to exclude;
 - (3) accounts or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included, and
 - (4) such other documents as the High Court may direct to be excluded;
 and when the applicant prefers to print in India the copy of the record, except as aforesaid, he shall also, within the time mentioned in the first clause of this section, deposit the amount required to defray the expense of printing such copy.

COSTS of printing and translation, certified by the Deputy Registrar of the High Court, are a necessary part of the costs of an appeal to the Privy Council. The amount of such costs is left to be ascertained by the High Court, and is not assessed by the Privy Council Office.—*Ram Coomar Ghose v. Prosunno Coomar Sannyal*, I. L. R., 10 Cal. 106. [Aug. 31, 1883.]

THE words in s. 602 of Act X. of 1877, relating to the time within which security is to be given, are directory only; and although they are not to be departed from without cogent reason, the Court from which the appeal is preferred has the right of extending the time. In this case, a satisfactory explanation having been given of delay in giving security until after the time limited by the above section had expired, *held* that the Court had rightly exercised discretion in extending the time. In the Matter of the Petition of Soorj mukhi Koer (I. L. R., 5 Cal. 2) approved. The paternal grandmother of a deceased village-shareholder claiming to inherit in preference to his male collateral relations, the issue was fixed with the assent of the pleaders on both sides, whether the plaintiff, as a female, was excluded from inheriting by the custom of the family or tribe. *Held* that this was substantially a question of fact, and that on the evidence, which included the village *vajib-ul-arz*, the customary exclusion of females was not proved.—*Burjore and Bhawani v. Bhagana*, I. L. R., 10 Cal. 557. [Nov. 23, 1883.]

THE time allowed by s. 602 of the Civil Procedure Code for giving the security and making the deposit required by that section may be extended.—*Fazul-un-nissa Begam v. Mulo*, I. L. R., 6 All. 250. [Mar. 17, 1884.]

A PLAINTIFF, having preferred an appeal to Her Majesty in Council, was called upon to furnish security. Thereupon A, on behalf of appellant, executed a security-bond for the costs of the respondent. The appeal was dismissed with costs by Her Majesty in Council. On an application (by the respondent in the appeal) for execution to issue against the estate of A, the surety (who had died in the meantime), *held* that the liability of the surety under the security-bond could not be enforced in execution of the decree of Her Majesty in Council. *Bans Bahadur Singh v. Mughla Begum* (I. L. R., 3 Mad. 107) dissented from.—*Radha Pershad Singh v. Phuljuri Koer*, I. L. R., 12 Cal. 402. [July 3, 1885.]

603. When such security has been completed and deposit made to the satisfaction of the Court, the Court may

- (a) declare the appeal admitted, and
- (b) give notice thereof to the respondent, and shall then
- (c) transmit to Her Majesty in Council, under the seal of the Court, a correct copy of the said record, except as aforesaid, and
- (d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

A PLAINTIFF, having preferred an appeal to Her Majesty in Council, was called upon to furnish security. Thereupon A, on behalf of appellant, executed a security-bond for the costs of the respondent. The appeal was dismissed with costs by Her Majesty in Council. On an application (by the respondent in the appeal) for execution to issue against the estate of A, the surety (who had died in the meantime), *held* that the liability of the surety under the security-bond could not be enforced in execution of the decree of Her Majesty in Council. *Bans Bahadur Singh v. Mughla Begum* (I. L. R., 3 Mad. 107) dissented from.—*Radha Pershad Singh v. Phuljuri Koer*, I. L. R., 12 Cal. 402. [July 3, 1885.]

604. At any time before the admission of the appeal, the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

605. If at any time after the admission of the appeal, but before the transmission of the copy of the record, except as aforesaid, to Her Majesty in Council, such security appears inadequate,

or further payment is required for the purpose of translating, transcribing, printing, indexing, or transmitting the copy of the record, except as aforesaid, the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

Effect of failure to comply with order.

606. If the appellant fail to comply with such order, the proceedings shall be stayed, and the appeal shall not proceed without an order in this behalf of Her Majesty in Council, and in the meantime execution of the decree appealed against shall not be stayed.

607. When the copy of the record, except as aforesaid, has been transmitted to Her Majesty in Council, the appellant may obtain a refund of the balance (if any) of the amount which he has deposited under section 602.

608. Notwithstanding the admission of any appeal under this chapter, the decree appealed against shall be unconditionally enforced, unless the Court admitting the appeal otherwise directs.

But the Court may, if it thinks fit, on any special cause shown by any party interested in the suit, or otherwise appearing to the Court,

(a) impound any moveable property in dispute or any part thereof, or
(b) allow the decree appealed against to be enforced, taking such security from the respondent as the Court thinks fit for the due performance of any order which Her Majesty in Council may make on the appeal, or

(c) stay the execution of the decree appealed against, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed against, or of any order which Her Majesty in Council may make on the appeal, or

(d) place any party seeking the assistance of the Court under such conditions, or give such other direction respecting the subject-matter of the appeal, as it thinks fit.

THREE different plaintiffs, claiming through the same original title to be the owner of a certain mahál, sued the same defendant in separate suits for possession and for the mesne-profits of their respective shares. The defence raised being the same in each case, the suits were heard together, the result being that in both the lower Courts and in the High Court the plaintiffs obtained a decree for their claims. The aggregate value of the three suits amounted to more than Rs. 10,000, though the value of each suit was under that sum. The defendant applied to be allowed to appeal in each case to Her Majesty in Council. *Held* that he was entitled to have each of the three cases admitted under the second clause of s. 596 of Act X. of 1877, as the decree in each case involved indirectly a question of title to property of the amount or value of Rs. 10,000. The Court has power under s. 608 to stay execution of a decree of the High Court in a suit subsequently appealed to Her Majesty in Council. *Quære*.—Whether the Court has power to order restitution of possession of property already taken in execution of its own decree pending an appeal to the Privy Council?—*Khajah Ashanullah v. Karoonah Moyi Chowdhry; Rohini Chowdhraim v. Kishen Gobind Das*, 4 C. L. R. 125. [Mar. 28, 1879.]

A PARTY to a suit in an Appellate Court, who had obtained leave to appeal from its decree to Her Majesty in Council, petitioned for the order of the latter staying execution of interlocutory orders made in execution of such decree, and directing payment by the petitioner to the opposite party of large sums without security taken for their repayment in the event of the decree being reversed. This accompanied a petition for special leave to appeal against those orders. The latter was granted, but it not being competent to the Judicial Committee to make any order as to the stay of execution, an intimation was made by it to the Court below that it appeared to be the reasonable course that the opposite party should not, pending the appeal, be put into possession of the large sums in dispute. That intimation being made, the petitioner might apply to the Court below for the due security of all money paid into the treasury in obedience to the decree. *Sidhee Nazur Ali Khan v. Oojoodhyaram Khan* (10 Moore's I. A. 322), and *Zeritool Batool v. Hosseinee Begum* (10 Moore's I. A. 196), referred to.—*Inder Kumari v. Jaipal Kumari*, I. L. R., 14 Cal. 290. [Nov. 13, 1886.]

609. If, at any time during the pendency of the appeal, the security so furnished by either party appears inadequate, the Court may, on the application of the other party, require further security:

In default of such further security being furnished as required by the Court, if the original security was furnished by the appellant, the Court may, on the application of the respondent, issue execution of the decree appealed against as if the appellant had furnished no such security.

And if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay all further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

610. Whoever desires to enforce or to obtain execution of any order of Her Majesty in Council shall apply by petition, accompanied by a certified copy of the decree or order made in appeal and sought to be enforced or executed, to the Court from which the appeal to Her Majesty was preferred.

Such Court shall transmit the order of Her Majesty to the Court which made the first decree appealed from, or to such other Court as Her Majesty by her said order may direct, and shall (upon the application of either party) give such directions as may be required for the enforcement or execution of the same; and the Court to which the said order is so transmitted shall enforce or execute it accordingly, in the manner and according to the rules applicable to the execution of its original decrees.

When any moneys expressed to be payable in British currency are payable in India under such order, the amount so payable shall be estimated according to the rate of exchange for the time being fixed by the Secretary of State for India in Council, with the concurrence of the Lords Commissioners of Her Majesty's Treasury, for the adjustment of financial transactions between the Imperial and the Indian Governments.

BEFORE a decree-holder in the District Court can obtain execution of a decree which has been affirmed by the Privy Council, he must produce, on the application for execution, a certified copy of the order passed by Her Majesty in Council.—*Juggernath Sahoo v. Jundoo Bey Singh*, I. L. R., 5 Cal. 329. [May 2, 1879.]

AN appeal was preferred to the Privy Council from a final decree passed upon appeal by the High Court, and B and certain other persons on behalf of the appellant gave security for the costs of the respondent. The Privy Council dismissed the appeal, and ordered the appellant to pay the costs of the respondent. The respondent applied to the Court of first instance for the execution of that order against B and the other persons as sureties. *Held* that under Act X. of 1877, ss. 610 and 253, such order could be executed against the sureties.—*Bans Bahadur Singh v. Mughla Begam*, I. L. R., 2 All. 604 (F. B.). [Jan. 8, 1880.]

A DECREE obtained on appeal of certain defendants in the High Court was appealed to the Privy Council by one only of the two plaintiffs to the suit, and the decision of the High Court was reversed; the plaintiff who had appealed assigned her share in the order of the Privy Council to one of the defendants, and delivered him the certified copy of the decree made in the Privy Council. The plaintiff who had not appealed to the Privy Council applied to the High Court for leave to transmit the order to the Court of first instance for execution of the share decreed to him, but, on account of the assignment above-mentioned, was unable to produce the certified copy of the decree of the Privy Council. The Judge presiding over the Privy Council Department in the High Court held that the production of a certified copy of the order of the Privy Council was excusable under the circumstances, but refused the application, on the ground that the decree of the Court of first instance, which was affirmed by the Privy Council, could only be executed as a whole, and not partly

by one of the plaintiffs. *Held* on appeal *per* Garth, C.J.—That the duties of a Judge in dealing with the meaning of decrees of the Privy Council are purely ministerial, and that any order made in such ministerial capacity could not be considered a judgment, and could not, therefore, be made the subject of an appeal to a Bench of the High Court under s. 15 of the Charter. *Per* White and Mitter, J.J.—An order of a Judge presiding over the Privy Council Department in the High Court, rejecting an application for execution, is a final order, and is a judgment within the meaning of s. 15 of the Charter, and is therefore appealable.—In the Matter of the Petition of Kally Soondery Dabia; Kally Soondery Dabia v. Hurriah Chunder Chowdhry, I. L. R., 6 Cal. 594. [June 13, 1881.]

The provisions of Act X. of 1877, s. 610, are not to be construed as restricting the only admissible evidence of an order of Her Majesty in Council to a certified copy, or an application for execution made under that section. They must be read as directory, having the object that proper information regarding the order shall be supplied to the Courts in India. Where the original order (given, according to the practice in England, to the successful party, or to one of such parties) had not been filed in the High Court, so as to enable the proper officer to supply a certified copy, *held* that a copy, though not certified by him, might accompany a petition for execution under s. 610.—Hurriah Chunder Chowdhry v. Kalsunderi Debi, I. L. R., 9 Cal. 482. [Nov. 16, 1882.]

A PLAINTIFF, having preferred an appeal to Her Majesty in Council, was called upon to furnish security. Thereupon A, on behalf of appellant, executed a security-bond for the costs of the respondent. The appeal was dismissed with costs by Her Majesty in Council. On an application (by the respondent in the appeal) for execution to issue against the estate of A, the surety (who had died in the meantime), *held* that the liability of the surety under the security-bond could not be enforced in execution of the decree of Her Majesty in Council. Bais Bahadur Singh v. Mughla Begum (I. L. R., 3 Mad. 107) dissented from.—Radha Pershad Singh v. Phuljari Koor, I. L. R., 12 Cal. 402. [July 3, 1885.]

UNDER the last paragraph of s. 613 of the Civil Procedure Code, the amount payable must be estimated at the rate of exchange “for the time being fixed by the Secretary of State for India in Council,” and the words “for the time being” mean the year in which the amount is realized or paid or execution taken out, and not the year in which the decree was passed. The decree-holders, under a decree passed by Her Majesty in Council, having taken out execution for a sum of £112-11 under s. 610 of the Civil Procedure Code, *held* that, the rate of exchange being fixed yearly by the Secretary of State for India in Council, the rate of exchange on the date of the application for execution was the proper rate of exchange the decree-holders were entitled to.—Param Sukh v. Ram Dayal, I. L. R., 8 All. 650. [Aug. 12, 1886.]

611. The orders made by the Court which enforces or executes the order of Her Majesty in Council, relating to such enforcement or execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the enforcement or execution of its own decrees.

Power to make rules.

612. The High Court may, from time to time, make rules consistent with this Act to regulate—

- (a) the service of notices under section 600;
 - (b) the grant or refusal of certificates, under sections 601 and 602, by Courts of final appellate jurisdiction subordinate to the High Court;
 - (c) the amount and nature of the security required under sections 602, 605, and 609;
 - (d) the testing of such security;
 - (e) the estimate of the cost of transcribing the record;
 - (f) the preparation, examination, and certifying of such transcript;
 - (g) the revision and authentication of translations;
 - (h) the preparation of indices to transcripts or records, and of lists of the papers not included therein;
 - (i) the recovery of costs incurred in British India in connection with appeals to Her Majesty in Council;
- and all other matters connected with the enforcement of this chapter.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law in the High Court and the Courts of final appellate jurisdiction subordinate thereto.

613. All rules heretofore made and published by any High Court relating to appeals to Her Majesty in Council, and in force immediately before the passing of this Act, shall, so far as they are consistent with this Act, be deemed to have been made and published hereunder.

614. In sections 595 and 612, the expression "High Court" shall be deemed to include also the Recorder of Rangoon, but not so as to empower him to make rules binding on Courts other than his own Court.

615. The rules and restrictions referred to in Bengal Regulation III. of 1818, section IV., clause *fifth*, shall be deemed to be the rules and restrictions applicable to appeals under this Code from the decisions of the High Court of Judicature at Fort William in Bengal.

616. Nothing herein contained shall be understood—

(a) to bar the full and unqualified exercise of Her Majesty's pleasure in receiving or rejecting appeals to Her Majesty in Council, or otherwise howsoever, or

(b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to Her Majesty in Council or their conduct before the said Judicial Committee.

And nothing in this chapter applies to any matter of criminal or admiralty or vice-admiralty jurisdiction, or to appeals from orders and decrees of Prize Courts.

PART VII.

CHAPTER XLVI.

OF REFERENCE TO AND REVISION BY THE HIGH COURT.

Extending to
Provincial S.
C. Courts.

617. If, before or on the hearing of a suit or an appeal in which the decree is final, or if, in the execution of any such decree, any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits, arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

WHEREAS A, under the terms of a will, although not expressly appointed an executor, was directed to receive and pay the testator's debts, and to get in and distribute his personal estate, *held* that A must be taken to have been appointed under the will an executor

by implication. In the Goods of Baylis (L. R. 1 P. M. 21) followed. The order made by a District Judge on an application for probate, not being a final order, cannot be referred for the opinion of the High Court under s. 617 of the Code of Civil Procedure. But the Court will, under certain circumstances, entertain such an application, as a Court of concurrent jurisdiction, under s. 264 of the Indian Succession Act.—In the Matter of Monohur Mookerjee, I. L. R., 5 Cal. 750. [May 7, 1880.]

THE High Court has no power to review a judgment passed by it on a reference from a Subordinate Judge with Small Cause Court powers. Cl. c of s. 623 of the Code of Civil Procedure (Act XIV. of 1882) allows of a review of judgment on a reference only from a Court of Small Causes. The judgment of the High Court in such a case is not a decree or order within the meaning of cl. b of the section, but is simply a statement of the grounds, in conformity with which the lower Court is to dispose of the case, as provided by s. 619.—Rámchandra Bábjí v. Sitáram Vináyak, I. L. R., 10 Bom. 68. [July 23, 1885.]

ON the 22nd March 1886, the applicant presented an application to a Subordinate Judge, praying that the adjustment of certain decrees, dated the 24th March 1867, and 11th July 1871, might be certified, and a sanction granted to a *sankhat*, dated 18th March 1880, passed to him by the defendant in satisfaction of the said decrees and in substitution of two bonds dated February 1870. The Subordinate Judge, being of opinion that the application could not be granted, inasmuch as the execution of the decrees was then barred by limitation, referred the case to the High Court under s. 617 of the Civil Procedure Code (Act XIV. of 1882). Held that the question could not be referred under s. 617 of the Civil Procedure Code (Act XIV. of 1882), as the order applied for to the Subordinate Judge was appealable under s. 2 of the Code. The question raised by the application related to the satisfaction of the decree within the meaning of s. 244 of the Code.—Bangji v. Harjivan, I. L. R., 11 Bom. 57. [July 22, 1886.]

Court may pass decree contingent upon opinion of High Court.

reference, and may pass a decree or order contingent upon the opinion of the High Court on the point referred;

but no execution shall be issued, property sold, or person imprisoned in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon such reference.

618. The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or order contingent upon the opinion of the High Court on the point referred; Extending to Provincial S. C. Courts.

619. The High Court shall hear the parties to the case in which the reference is made, in person or by their respective pleaders, and shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

Ditto.

THE High Court has no power to review a judgment passed by it on a reference from a Subordinate Judge with Small Cause Court powers. Cl. c of s. 623 of the Code of Civil Procedure (Act XIV. of 1882) allows of a review of judgment on a reference only from a Court of Small Causes. The judgment of the High Court in such a case is not a decree or order within the meaning of cl. b of the section, but is simply a statement of the grounds, in conformity with which the lower Court is to dispose of the case, as provided by s. 619.—Rámchandra Bábjí v. Sitáram Vináyak, I. L. R., 10 Bom. 68. [July 23, 1885.]

Costs of reference to High Court.

620. Costs (if any) consequent on a reference for the opinion of the High Court shall be costs in the case.

Ditto.

621. When a case is referred to the High Court under this chapter, the High Court may return the case for amendment, and may alter, cancel, or set aside any decree or order which the High Court making the reference has passed in the case out of which the reference arose, and make such order as it thinks fit.

Ditto.

Power to alter, &c., decrees of Court making reference.

Extending to
Provincial S.
C. Courts.

622. The High Court may call for the record of any case in which no appeal lies to the High Court, if the Court by which the case was decided appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction "illegally or" * with material irregularity; and may pass such order in the case as the High Court thinks fit.

WHERE an application was made for the issue of execution of decree, and the District Munsif made an order refusing execution, the decree being one passed not in a regular suit, and governed by the one-year limitation, and the Subordinate Judge on appeal reversed the Munsif's order, applying the three years' limitation, *held* by the High Court that, as Act X. of 1877, s. 588, provided that orders passed in appeal from orders under s. 244 should be final, no second appeal lay; and that the High Court could not interfere under s. 622, as the Subordinate Judge had jurisdiction to hear the appeal.—*Suryaprakasa Rao v. Vaisya Sannyasi, Dzu, I. L. R., 1 Mad. 401.* [Sep. 16, 1877.]

THE purchaser at a sale by public auction did, by the exercise of fraud and collusion with the agent of the execution-creditor (though without the creditor's personal knowledge), succeed in becoming the purchaser at a depreciated value. There was no material irregularity in publishing or conducting the sale. *Held* that the Court which ordered the sale had jurisdiction to refuse to confirm the sale on the ground of the fraud practised by the agent of the execution-creditor and the purchaser. *Held* also that the High Court had power under s. 622 of Act X. of 1877 to rescind the order made by the Court of first instance confirming the sale. *Held* by Kernan, J.—That the party defrauded out not to be referred to bring a regular suit. The question ought to be decided at once on motion in the original cause. *Held* by Muttasami Ayyar, J., that fraud was a valid ground of relief on petition when it related to the mode in which the auction was held, and the purchaser was a party to it, but it was doubtful whether fraud was a ground of relief on petition when it was a remote cause of the sale. — *Subbaji Rao v. Srinivasa Rao and Pulliah, I. L. R., 2 Mad. 264.* [Jan. 19, 1880.]

AN application to sue as a pauper having been refused on the ground that the suit was barred by limitation, the High Court, on revision, permitted the applicant to renew his application to the Court below. The Subordinate Judge verbally rejected this second application, stating that he would deliver a written judgment. Before the written judgment was delivered, the applicant offered to pay the usual court-fees (although not actually tendering them at the time), and asked that the petition might be taken as a plaint filed on the date of the first application. This offer was mentioned and refused in the written judgment. *Held*, on the case coming up to the High Court under Act X. of 1877, s. 622, that the circumstances of the case were not such as would justify the Court in interfering under that section.—*Ramahai Sing v. Maniram, I. L. R., 5 Cal. 807.* [Feb. 18, 1880.]

CERTAIN immoveable property was, on the 15th February 1879, notified for sale under a decree of a Civil Court on the 15th March following, so that only 29, instead of 30, days elapsed between the day of the sale and the notification. The sale having taken place, the execution-debtor applied to the Deputy Commissioner to set it aside upon the ground that the sale was illegal, the requirements of Act X. of 1877, s. 290, being essential to its validity. Upon that ground the sale was set aside as illegal by the Deputy Commissioner. On appeal, the Judicial Commissioner reversed this decision, on the ground that the fact of the sale having taken place 29 instead of 30 days after the notification was merely an irregularity, and that, as the execution-debtor had not shown that he had suffered any damage from the irregularity, the sale ought to be confirmed. An application was then

* S. 622, in its application to the territories to which the Panjab Courts Act (XVIII. of 1884) extends, shall be read as if the words "illegally or" were omitted, and for the purposes of that section no appeal shall be deemed to lie from the appellate decree of a Divisional Court to the Chief Court when the case does not fall under cl. A, cl. B, or cl. C of s. 40, and an application under cl. D of that section has been refused.—Panjab Courts Act (XVIII. of 1884), s. 70. If the Court, on an application under s. 622 of the Civil Procedure Code, on which a fee has been paid under the last preceding section, sets aside or modifies the decree or order of a Subordinate Court, or remands the case for a fresh decision, it may grant to the applicant a certificate authorising him to receive back from the Collector the full amount of fee paid on the application, or any smaller amount which, with regard to the circumstance of the case, it may think proper to order to be refunded.—Panjab Courts Act (XVIII. of 1884), s. 72.

made to a division Bench of the High Court to set aside the order of the Judicial Commissioner confirming the sale, upon the ground that it was manifestly erroneous, and the Division Bench referred the question to a Full Bench: Whether, assuming the requirements of s. 290 to be essential to the validity of a sale, the High Court had any power, either under 24 and 25 Vic. c. 105, s. 15, or Act X. of 1877, s. 622, as amended, to set aside the Judicial Commissioner's order. *Held* by the Full Bench, without answering the question referred, that, assuming the requirements of s. 290 to be essential, the High Court had a right, under its summary powers, to set aside the sale itself, notwithstanding (and apart from the question whether it would set aside) the order of the Judicial Commissioner.—*In re Bhokraji Keori*, I. L. R., 5 Cal. 878. [April 5, 1880.]

WHEN a Court has refused to file an award upon an application under s. 525, Civil Procedure Code, no appeal lies against such decision, which is an order, and not a decree; but the High Court can interfere under s. 622. An award made under s. 525, which is partly within and partly exceeds the terms of the submission to arbitration, cannot be enforced by summary procedure under s. 526 as to such portion as does not exceed those terms. To refer to arbitration questions arising on the construction of the award and questions left undecided by it is a matter beyond the scope of an agreement to submit to a scheme for the future management of a *dévasan* as regards conduct of suits, granting of demises, custody of property, collection of rents, appointment and removal of servants, and defrayment of current expenditure.—*R. Ry. Māna Vikrama, Zamorin, Maharāja Bahadur of Calicut v. Mallichery Krishnan Nambūdi*, I. L. R., 3 Mad. 68. [July 26, 1880.]

Per Pearson, J., Oldfield, J., and Straight, J.—When, under s. 622 of Act X. of 1877, the High Court has called for the record of a case in which no appeal lies to it, it may, under that section, pass any order in such case which it might pass if it dealt with the case as a second appeal under chap. 42 of that Act. *Per* Stuart, C.J.—The High Court may, under that section, pass in such case any order, whether in regard to fact or law, as it thinks proper. Where, in a case of the execution of a decree in which no second appeal lay to the High Court, the Appellate Court held, on the construction of the decree, that it awarded interest on the principal amount of the decree, the High Court, under s. 622 of Act X. of 1877, holding that the Appellate Court has misconstrued the decree, and that the decree did not award such interest, modified the order of the Appellate Court accordingly.—*In the Matter of the Petition of Moulvi Muhammad v. Syed Husain*, I. L. R., 3 All. 203 (F. B.). [Aug. 18, 1880.]

It is only on the application of a party interested that the High Court can act as a Court of Revision under s. 622 of the Civil Procedure Code. Accordingly, where a Munsif, considering that the Subordinate Judge had acted without jurisdiction in setting aside, on appeal, certain orders made by him, brought the matter to the knowledge of the District Judge, who took the same view, and the latter referred the case to the High Court under that section, it was held that the Court had no power to interfere.—*Mahomed Foyez Chowdhry*, 7 C. L. R. 191. [Aug. 20, 1880.]

S INSTITUTED a suit against T in the Court of the Assistant Collector of the first class, who dismissed the suit. On appeal by S the District Court gave her a decree. On second appeal by T the High Court held that, as the suit was one of the nature cognizable in a Court of Small Causes, a second appeal would not lie in the case, and dismissed it. T thereupon applied to the High Court to set aside, under the provisions of s. 622 of Act X. of 1877, the proceedings of both the lower Courts, on the ground that both those Courts had exercised a jurisdiction not vested in them by law. *Held* that the High Court was competent to entertain such application, and to quash the proceedings of both the lower Courts under the provisions of s. 622 of Act X. of 1877, and the proceedings of both those Courts should be quashed. Observations by Stuart, C.J., on the powers of revision of the High Court under s. 622 of Act X. of 1877.—*Sarnam Tewari v. Sakina Bibi*, I. L. R., 3 All. 417. [Jan. 4, 1881.]

THE discretionary power of a Civil Court, before or against which an offence mentioned in s. 468 or 469 of Act X. of 1872 is alleged to have been committed, to grant or withhold sanction to the prosecution for such offence, is not subject to revision by the High Court under s. 622 of Act X. of 1877.—*In the Matter of the Petition of Madho Prasad*, I. L. R., 3 All. 508. [Feb. 1, 1881.]

THE rule of English practice which prevents a minor from instituting a suit *in forma pauperis* through his next friend, unless he gives proof not only that he is himself a pauper, but that the next friend is a pauper, and that he cannot get any substantial person to act as his next friend, is not to be found in, or deduced from, the provisions of the Civil Procedure Code.—*Venkatanarasayya v. Achemma*, I. L. R., 3 Mad. 8. [Feb. 28, 1881.]

AFTER a mortgage had been foreclosed under the provisions of Regulation XVII. of 1806, the representative of the mortgagor deposited the mortgage-money in Court. The District Judge ordered that the money should be paid to the mortgagor on the ground that the mortgagor had not been personally served with the notice required by §. 8 of that Regulation, and that it did not appear that she had been aware of the foreclosure-proceedings. The District Judge subsequently ordered the mortgagee, who was in possession of the mortgaged property under the term of the mortgage, to surrender the property. The mortgagee applied to the High Court to revise these orders under s. 622 of Act X. of 1877. *Held* that the application was entertainable under the provisions of that section, and that the orders of the District Judge were made without jurisdiction, and should be set aside.—*Hazari Lal v. Kheru Bai*, I. L. R., 3 All. 576. [Mar. 25, 1881.]

A AND B, both of whom set up a claim to certain land, brought separate rent-suits against the tenants. In one of these suits did the amount claimed exceed Rs. 100. Subsequently to the institution of the rent-suit, A sued B to establish his title to the land in dispute. The District Judge, before whom the rent-suit came on appeal, allowed them to stand over until the decision in the suit between A and B. That suit was decided in favour of B, and the Judge then decided the rent-suits instituted by B in his favour, and dismissed the suits instituted by A. *Held* that no second appeal would lie in the rent-suits, as no question of title between parties having conflicting claims was decided in them. *Held* also that there was no such irregularity on the part of the District Judge in the course which he pursued, of making his decision in the rent-suit depend upon the decision in the suit to establish title, as would justify the Court in interfering under s. 622 of the Civil Procedure Code. S. 102 of Beng. Act VIII. of 1865 was enacted in order to protect parties in the position of raiyat-defendants, and to prevent their being dragged up to the High Court in cases where the decree or demand is under Rs. 100. In such cases the decree is intended to have the same effect as that of the Small Cause Court.—*Doorga Narain Sen v. Ram Lal Chhutar*, I. L. R., 7 Cal. 330. [May 10, 1881.]

No Court, other than a Court of Appeal or a High Court acting under s. 622, can discharge an order of attachment issued by another Court. Where a claimant to property attached in execution of a decree intervenes, but fails to get the order of attachment set aside, and is compelled to bring a suit to establish his right, the discharge of the order of attachment cannot properly be asked for in such suit. The intervenor, having established his title by declaratory decree or otherwise, should then carry the decree to the Court by which the order of attachment was issued, and such Court is bound to recognize the adjudication, and govern itself accordingly. *Narayanrav Damedar v. Balkrishna Mahadev Gadre* (I. L. R., 4 Bom. 529) followed.—*Kolashherri Illath Narainan* and another *v. Kolashherri Illath Nilakandan Nambudri* and another, I. L. R., 4 Mad. 131. [Sep. 2, 1881.]

S. 9 of the Specific Relief Act does not prohibit a rehearing under s. 105 of the Code of Civil Procedure. A rehearing differs widely from a review. A High Court can interfere under s. 622 of the Code of Civil Procedure without an application made to it by a party to a suit.—*Andrew Anthony v. Rev. J. M. Dupont*, I. L. R., 4 Mad. 217. [Sep. 30, 1881.]

WHERE an auction-purchaser applied to the High Court to set aside, in the exercise of its powers under s. 622 of the Civil Procedure Code, an order setting aside a sale of immoveable property in execution of a decree, on the ground that such order was illegal, such application being made nearly seventeen months after the date of such order, the Court, having regard to the time that had elapsed before such application was made, refused to interfere.—In the Matter of the Petition of Durga Prasad *v. Sheo Charan Lal*, I. L. R., 4 All. 154. [Dec. 7, 1881.]

WHERE a Court improperly refused to amend a decree, which was at variance with the judgment, *held* that in so acting the Court had acted in the exercise of its jurisdiction illegally and with material irregularity within the meaning of s. 622 of the Civil Procedure Code, and its order was consequently subject to revision under that section. On the question whether the High Court should refrain from exercising its powers under s. 622 by reason of the long time which had elapsed from the date of the decree, *held* that the petitioner was not fairly chargeable with laches.—*Balmakund v. Sheo Jatan Lal*, I. L. R., 6 All. 125. [Mar. 15, 1882.]

AFTER a decree had been made *ex parte*, the defendant applied to have it set aside. The Subordinate Judge refused the application, but his order was reversed by the District Judge. *Held* that the order of the District Judge was final under s. 588, and that no second appeal would lie; nor would the Court interfere under s. 622 of the Code.—*Aubinand Chunder Mookerjee v. Martin*, I. L. R., 8 Cal. 332. [April 13, 1882.]

S. 522 of the Code of Civil Procedure, 1877, which provides that no appeal shall lie from a decree upon an award, except in so far as the decree is in excess of, or not in accordance with, the award, assumes that the award has been regularly and properly passed by arbitrators duly appointed. Where two of five arbitrators nominated by the parties to a suit and appointed by the Court had not consented before, and, after appointment, declined to act, and the Court appointed two arbitrators in their place against the consent of one of the parties to the suit, *held* that, under the circumstances, the appointment of the new arbitrators was not warranted by the provisions of s. 510 of the Code of Civil Procedure, and the order of reference to such arbitrators, the award made by them, and the decree passed upon the award, were illegal. *Held* also that the High Court could set aside the decree under the powers given by s. 622 of the Code of Civil Procedure.—*Pugardin v. Moidin*, I. L. R., 6 Mad. 414. [April 13, 1882.]

A PERSON claiming to be a co-sharer in certain undivided immoveable property, a share of which had been sold in execution of a decree, objected to the confirmation of the sale in favour of the person recorded as the auction-purchaser, and prayed that it might be confirmed in his favour, with reference to the provisions of s. 311 of the Code of Civil Procedure. The Court disallowed the objection, and confirmed the sale in favour of the auction-purchaser. The objector thereupon applied to the High Court for revision of the order of the lower Court under s. 622 of the Civil Procedure Code. *Held* that, having been allowed to object to the confirmation of the sale, and treated as a party to the proceeding held therein, it was competent for him to make such application, notwithstanding that he was not one of the persons mentioned in s. 311 of the Code; that there being no appeal in the case, so far as he was concerned, the High Court was competent to entertain the application under s. 622 of the Code; but that, as he was not one of the persons who was competent to avail himself of the provisions of s. 311, he had no *locus standi* to justify his application to the lower Court, and the application for revision must therefore be dismissed.—*Bisheshwar Kuar v. Hari Singh*, I. L. R., 5 All. 42. [July 18, 1882.]

AN order under s. 251 of the Civil Procedure Code, setting aside an award, made on a reference to arbitration in the course of a suit, under chap. 37 of the Code, on the ground of the arbitrator's misconduct, is not subject to revision by the High Court in the exercise of the powers conferred on it by s. 622 of the Code.—*Chattar Singh v. Lekhraj Singh*, I. L. R., 5 All. 293. [Feb. 1, 1883.]

A DIVISION Bench (Pinhey and Nambhai Haridas, JJ.) of the High Court referred the following question for the determination of the Full Bench: "Whether the High Court should exercise its extraordinary jurisdiction under s. 622 of the Code of Civil Procedure, or otherwise, on behalf of persons who feel themselves aggrieved by orders passed by Courts below in cases in which it appears the law has specifically prescribed another remedy by suit or otherwise?" *Held* that the question did not admit of a precise categorical reply; that the High Court could not impose on itself limitations without regard to circumstances; but that the general principles governing the exercise, by the High Court, of its visitatorial or superintending powers to be deduced from a general survey of the authorities on the subject might be reduced to the form of the following seven propositions, the fifth of which would ordinarily govern in the class of cases alluded to in the question:—

(1.) The visitatorial or superintending power of the High Court is so necessary, and almost indispensable, that it is not to be wholly excluded even by a clause in a Statute withdrawing cases under the Statute from its control. When such a Statute has been made a mere pretext, or has been wholly misapplied, the case will be treated as one not really arising under the Statute, but on an evasion or perversion of the Statute, and, as such, subject to the general control of the Court. (2.) The Court, having called up the record or proceedings of a subordinate Court, will itself investigate the facts on which a jurisdiction has been assumed or declined; on which it depends whether the subordinate Court could or could not legally deal with the matter in question, either at all or on the principle to which it has referred the case; or according to which its mode of inquiry or of action may or may not have been in contradiction rather than obedience to the rules or procedure, or the principles implied in them, to such a material extent as to defeat the purpose of the law. (3.) If the Court finds that the external conditions of jurisdiction, of investigation, and of command, have been satisfied by the inferior Court, it will not substitute its own appreciation of evidence, or its own judgment thereon, for the determination of the inferior Court, in any matter committed by the Legislature to the discretion of such Court. (4.) Where an appeal is provided, the Court will not interfere by any peremptory order with the ordinary course of adjudication, save in cases wherein a defect of the law and a grave wrong are manifest, and are irremediable by the regular procedure. (5.) Where a decree or order of a subordinate Court is declared by the law to be, for its own purposes, final or conclusive, though in its nature provisional, as subject to displacement by the decree in

another more formal suit; the Court will have regard to the intention of the Legislature that promptness and certainty should, in such cases, be in some measure accepted instead of judicial perfection. It will rectify the proceedings of the inferior Court where the extrinsic conditions of its legal activity have plainly been infringed; but where the alleged or apparent error consists in a misappreciation of evidence, or misconstruction of the law, intrinsic to the inquiry and decision, it will respect the intended finality, and will intervene peremptorily only when it is manifest that by the ordinary and prescribed method an adequate remedy, or the intended remedy, cannot be had. (6.) The Court will, in all cases, regard its exercise of the extraordinary jurisdiction as discretionary, and subject to considerations of the importance of the particular case, or of the principle involved in it, of delay on the part of an applicant, and of his merits with respect to the case in which the interference of the Court is sought. Should other special causes appear for or against the Court's intervention, due weight is to be given to them, regard being always had to the principles already enunciated. (7.) The Court will "sedulously abstain" from making any order or refusing to make it on grounds the appreciation of which is exclusively assigned by law to some other authority, provided the legal competence be exercised in good faith on matters that may reasonably be understood as within its lawful range.—*Shivá Nátháji v. Jomá Kashinath*, I. L. R., 7 Bom. 341. [July 6, 1883.]

AN order under s. 335 of the Civil Procedure Code is subject to revision by the High Court under s. 622 of that Code. *Shiva Nathaji v. Joma Kashinath*, I. L. R., 7 Bom. 341) followed.—*Sheoráj Singh v. Banwári Dás*, I. L. R., 6 All. 172. [Jan. 22, 1884.]

AN order under s. 25 of the Civil Procedure Code, transferring a suit in which an appeal would lie from the decree made therein, is not subject to revision by the High Court under s. 622.—*Farid Ahmad v. Dulari Bibi*, I. L. R., 6 All. 233. [Feb. 19, 1884.]

A COURT that has decided a suit over which it had jurisdiction cannot, only on the ground that it has arrived at wrong decision, be said to have exercised its jurisdiction illegally, or with material irregularity, within the meaning of s. 622 of Act X. of 1877, as amended by s. 92 of Act XII. of 1879.—*Anfir Hassan Khan v. Sheo Baksh Singh*, I. L. R., 11 Cal. 6. [June 20, 1884.]

AN order rejecting a memorandum of appeal as barred by limitation is a "decree" within the meaning of s. 2 of the Civil Procedure Code; it is therefore appealable, and not open to revision by the High Court under s. 622 of the Code. *Gajraj Singh v. Bhagwant Singh and Dianatullah* (Weekly Notes, 1883, p. 255) and *Reg. v. Wajid Ali Shah* (I. L. R., 6 All. 438) distinguished.—*Gulab Rai v. Mangli Lal*, I. L. R., 7 All. 42. [June 29, 1884.]

IN 1862 a suit for mesne-profits was brought against certain persons as being the heirs of one Romanath Lahiry, deceased, among whom were his widow and two infant sons. During the pendency of this suit the two infant sons died; and the widow was made a defendant as representing the estate of her deceased sons. The suit was decreed in favour of the plaintiffs in 1875; and on the plaintiffs applying for execution the widow objected that 5-16th of the properties against which execution was sought, was the property of her adopted son whom she alleged to have adopted in 1874; the adopted son was not made a party to the suit; this objection was overruled, but the same objection was taken by the adopted son through his natural father as his guardian and next friend, and the Court released the 5-16th share from attachment, and allowed the objection. Against this order some of the plaintiffs appealed, but pending the appeal another of the plaintiffs applied to the High Court under s. 622 of the Code of Civil Procedure to have the order set aside. The Court, whilst refusing to interfere with the order, inasmuch as there appeared to be no material irregularity therein, pointed out to the lower Court that the decree of 1875 having been obtained on account of a debt of Romanath Lahiry's, and being against the widow as representing her husband's (Romanath's) estate, the estate would be answerable for the debt, whether the widow or the adopted son represented the estate, supposing the decree to have been properly obtained. The principle in *Ishan Chunder Mitter v. Buksh Ali Soudagur* (Marsh. 614) followed.—*Sotish Chunder Lahiry v. Nil Comul Lahiry*, I. L. R., 11 Cal. 45. [Sep. 10, 1884.]

IN any case where there is a disregard of the law amounting to an excess of jurisdiction, or a perversion of the purposes of the Legislature, the High Court will interfere under its extraordinary jurisdiction where no other remedy is available.—*Dágdusá Tilakchand v. Bhukan Govind Shet*, I. L. R., 9 Bom. 82. [Sep. 15, 1884.]

THE opponents had obtained a decree for the possession of certain land against the brother and father of the applicants in the Court of the Mámálatdár at Karád, in the Sátára District. The applicants were not parties to the suit. The decree was executed, and the opponents were put into possession. Thereupon the applicants, on the 19th May

1884, presented a petition in the Mámlatdár's Court, under s. 4 of Bombay Act III. of 1876, alleging that they had been in actual possession of the lands, and had been ousted from them in execution of the decree, and praying that they might be again put into possession. The Mámlatdár was of opinion that the matter was *res judicata*, and dismissed the petition. He relied on a circular of the Executive Government as his authority. The applicants applied to the High Court under its extraordinary jurisdiction. *Held* that it was not a case for the exercise of the extraordinary jurisdiction of the High Court. The Mámlatdár was, no doubt, guilty of a formal error. In the exercise of his judicial functions he was bound to be governed by the law as he understood it, or as it had been expounded by superior judicial authority, not as it was understood or expounded by 'un-judicial persons. This, however, was merely an irregularity on the part of the Mámlatdár not apparently involving an injustice to the applicants, who might bring a suit on their title if they had a title.—*Náná Bayáji v. Pándurang Váśadev*, I. L. R., 9 Bom. 77. [Sep. 16, 1884.]

S, HAVING mortgaged land to K as security for a debt, sold it to V, who undertook to pay the debt. K, alleging that C had undertaken either to make V pay the debt or to execute a mortgage of his own land to secure its repayment, and that V had dispossessed him, sued S, V, and C to recover the debt by sale of the land mortgaged, mesne-profits from V, and costs from S, V, and C. The District Múnif decreed payment against S; mesne-profits, and, in default of payment by S, a sale of the land against V; and costs against S, V, and C. V and C appealed against this decree. The Subordinate Judge found that the debt had been paid, and held that, even if the debt had not been paid, K had no cause of action against V or S, but, if at all, against C, and dismissed the suit as against V. The Subordinate Judge also held that he had no jurisdiction to interfere with the decree against S, and saw no reason to interfere with the decree against C. S appealed against this decree. *Held* that, even if S was not entitled to appeal in order to have the decree against him set aside, the error of the Subordinate Judge could be corrected under s. 622 of the Code of Civil Procedure by a direction to exercise the discretionary power given by s. 544 of the said Code.—*Seshadri v. Krishnan*, I. L. R., 8 Mad. 192. [Nov. 17, 1884.]

A DECREE passed by a Subordinate Judge upon a bond, in which certain immoveable property was mortgaged, was, in accordance with the rules made by the Local Government under s. 320 of the Civil Procedure Code, transferred to the Collector for execution. A sale in execution took place, and the Collector gave the purchaser a certificate of the sale. Upon this certificate the purchaser applied to the Subordinate Judge to give him possession of a larger amount of property than that specified in the certificate, and, upon the refusal of the Court to do so, applied to the Collector to amend the certificate. The amendment having been made as desired, the purchaser again applied to the Subordinate Judge for possession of the amount claimed by him, and the Subordinate Judge again rejected the application, holding that only the lesser amount had been sold in execution of the decree. *Held* that, with reference to the second paragraph of rule 19 of the rules framed by the Local Government under s. 320 of the Civil Procedure Code, regarding the transmission, execution, and retransmission of decrees, and published in the N.-W. P. and Oudh Gazette of the 4th September 1880, the matter of delivery to the purchaser was within the jurisdiction of the Subordinate Judge, notwithstanding the terms of s. 320, and notwithstanding the ruling of the Full Bench in *Madho Prasad v. Hansa Kaur* (I. L. R., 5 All. 314). *Held* also that, inasmuch as the Subordinate Judge had jurisdiction to decide the question, and inasmuch as, even if his decision were wrong, the purchaser had a remedy by bringing a regular suit, the matter did not fall with s. 622 of the Civil Procedure Code, so as to call for the interference of the High Court in revision. *Shivanathaji v. Joma Kashinath* (I. L. R., 7 Bom 341) and *Amir Hassan Khan v. Sheo Baksh Singh* (I. L. R., 11 Cal. 6) referred to.—*Sundar Das v. Mansa Ram*, I. L. R., 7 All. 407. [Dec. 15, 1884.]

PER Oldfield, J.—When an original decree is amended under s. 206 of the Civil Procedure Code, it, as amended, is the decree in the suit; and an appeal, therefore, lies from it under the provisions of s. 540, when the validity of the amendment can be questioned. The matter of amending a decree under s. 206 does not by itself constitute a "case" within the meaning of s. 622 of the Civil Procedure Code, but forms part of the proceedings in the suit in which the decree is made. *Held*, therefore, per Oldfield, J., that, where an original decree, which was appealable, was amended by the Court of first instance, under s. 206 of the Civil Procedure Code, the High Court had no power to revise such amendment under s. 622 of the Code. *Per* Mahmood, J.—An order passed under s. 206 amending a decree is a separate adjudication, and is not merely a part of the original decree, and cannot alter its date; and such an order is not appealable under s. 588 of the Code. Such an order, therefore, can be revised by the High Court under s. 622.—*Raghunath Das v. Raj Kumar*, I. L. R., 7 All. 276. [Dec. 22, 1884.]

A DISTRICT Judge, by an order passed under s. 206 of the Civil Procedure Code, altered a decree passed by his predecessor in the terms, "I dismiss the appeal," to read "I accept the appeal," on the ground that his predecessor had obviously meant to say that he accepted the appeal, and that the decree as it stood failed to give effect to the judgment. *Per Oldfield, J.*—That the order passed by the Judge under s. 206 could not be made the subject of revision by the High Court under s. 622 of the Civil Procedure Code, because there was an appeal from the amended decree, which became the decree in the suit, and superseded the original decree. *Per Mahmood, J.*—That an order passed under s. 206 of the Civil Procedure Code constituted an adjudication separate from that concluded by a decree under the Code passed after the parties had been heard and evidence taken, and that the order in the present case was therefore a separate adjudication, and was not appealable under s. 588. Also that, in saying "but by "dismissed," his predecessor meant "decree," the Judge had altered the decree in a manner not warranted by the terms of s. 206, that he had, therefore, exercised his jurisdiction "illegally and with material irregularity" within the meaning of s. 622 of the Code, and that the Court was consequently competent to revise his order. *Raghunath Das v. Raj Kumar* (I. L. R., 7 All. 276) referred to.—*Surtia v. Ganga*, I. L. R., 7 All. 411. [Jan. 14, 1885.]

THE plaintiff brought a suit in the Calcutta Court of Small Causes to recover damages for trespass to certain immoveable property of which he proved he was in possession. The defendant contended that such a suit was one for the determination of a right to, or interest in, immoveable property, and was therefore not maintainable in the Small Cause Court. *Held* the Court had jurisdiction to entertain such a suit.—*Peary Mohun Ghosaul v. Harrau Chunder Gangooly*, I. L. R., 11 Cal. 261. [Mar. 2, 1885.]

A WRONG decision on a question of *res judicata* is not a subject for the interference of the High Court under s. 622 of the Code of Civil Procedure (Act XIV. of 1882).—*Hari Bhikaji v. Naro Vishvanath*, I. L. R., 9 Bom. 432. [Mar. 18, 1885.]

WHERE an application for leave to sue as a pauper was rejected with reference to s. 407 (c) of the Civil Procedure Code on the ground that the claim was barred by limitation, and therefore the applicant had no right to sue, *held* by the Full Bench that the Court had acted within his powers, and that its jurisdiction not having been exercised illegally or with material irregularity the High Court had no power of interference in revision under s. 622 of the Civil Procedure Code. *Amir Hassan Khan v. Sheo Baksh Singh* (I. L. R., 11 Cal. 3) referred to. The terms of s. 407 (c) of the Code must not be read as limiting the Court's discretion to merely ascertaining whether the "right to sue" arose within its jurisdiction, but have a more extended meaning, namely, that an applicant must make out that he has a good subsisting cause of action, capable of enforcement in Court, and calling for an answer, and not barred by the law of limitation or any other law. *Per Mahmood, J.*—The word "case" as used in s. 622 of the Civil Procedure Code should be understood in its broadest and most ordinary sense, including all adjudications which might constitute the subject of appeal subject to the rules governing the exercise of the appellate and revisional jurisdictions respectively; and it comprehends adjudications under s. 407, which fall under the same general category of adjudications as the rejection of an ordinary plaint under s. 53 or s. 54. *Phul Singh v. Jagan Nath* (Weekly Notes, 1883, p. 39), *Bhulnethri Dutt v. Bidiadhis* (Weekly Notes, 1882, p. 69), and *Sital Sahu v. Bachu Ram* (Weekly Notes, 1882, p. 92), referred to. Also *per Mahmood, J.*—The provisions of s. 407 must be interpreted strictly, inasmuch as they operate in derogation of the right possessed by every litigant to seek the aid of the Courts of Justice; and an exercise of jurisdiction under that section, when such exercise of jurisdiction is open to the objection of illegality or material irregularity, would form a proper subject of revision by the High Court. *Har Prasad v. Jafar Ali* (I. L. R., 7 All. 345) and *Ammal v. Nayudu* (I. L. R., 4 Mad. 323) referred to.—*Chettarpal Singh v. Raja Ram*, I. L. R., 7 All. 661. [April 8, 1885.]

IN a suit between A and B, heard on the 29th January 1883, a certain conveyance was filed with the plaint, but up to the hearing this conveyance had been protected from discovery. B's counsel had, however, had a copy thereof delivered to him at the time B's written statement was being drawn, and a copy briefed to him at the hearing. At the hearing A's counsel stated that the effect of the conveyance was to vest the entirety of a certain property in A; this view was accepted by B's counsel, who did not read the conveyance. The only issue in the case was "who was in possession of the property," and the Court decided this issue on the 5th February in favour of the plaintiff. On the 26th February, B brought a suit against A to set aside this conveyance on the ground of fraud. And in certain proceedings in this case taken on the 31st March, B's counsel discovered, as he alleged for the first time, that under the conveyance, a moiety of a seven-twenty-fourth share remained in B. On that day instructions were given to B's counsel to draw

up a petition of review of the judgment of the 5th February. This petition, owing to the Easter Vacation, was not, and could not have been, presented till the 9th April. *Held* that the words "sufficient reason" in s. 623 of the Code should receive a liberal construction, and should be construed so as to do substantial justice to the parties; that as in this case it appeared to the Court that the construction placed upon the conveyance by B's counsel was the correct one, "sufficient reason" had been shown for making the application. In deciding whether B had shown "sufficient cause" within the meaning of s. 5 of the Limitation Act for not making the application within the time allowed by law, the Court, following the principles laid down by Bowen, L.J., in *re Manchester Economic Building Society* (L. R., 21 Ch. 488), in its discretion, held that "sufficient cause" had been shown by B. *Anderson v. Corporation of the Town of Calcutta* (I. L. R., 10 Cal. 445) distinguished.—In the Matter of the Petition of Solomon; Gopal Chandra Lahiry v. Solomon, I. L. R., 11 Cal. 767. [July 16, 1885.]

In computing the period of eighty-nine days from the date of decree, within which an application for review of judgment may be presented on payment of half the fee leviable on the plaint or memorandum of appeal (under art. 5 of sch. I. of the Court Fees Act, 1870), the time during which the Court is closed for vacation cannot be excluded.—*In re Kona*, I. L. R., 9 Mad. 334. [July 28, 1885.]

WHERE a Court, professing to act under s. 311 of the Code of Civil Procedure, set aside a sale in execution of a decree without proof of substantial injury having been suffered by the applicant, *held* that such order was passed without jurisdiction within the meaning of s. 622 of the said Code.—*Lakshmana v. Najimudin*, I. L. R., 9 Mad. 145. [Aug. 28, 1885.]

THE plaintiffs obtained a decree in the Court of a Second-class Subordinate Judge for a sum less than Rs. 5,000, which, with accumulations of interest, subsequently exceeded Rs. 5,000. The plaintiffs applied in execution to recover the total amount. The application was rejected by the Subordinate Judge, on the ground that the Court had no jurisdiction under s. 24 of Act XIV. of 1869. On appeal, the District Judge made an order confirming the decision of the Subordinate Judge. The plaintiffs filed a second appeal in the High Court. *Held* that no second appeal lay to the High Court from such an order; but, as the Subordinate Judge was wrong in refusing to exercise his jurisdiction, the High Court would give relief under the extraordinary jurisdiction conferred by s. 622 of the Civil Procedure Code (Act XIV. of 1882). The subject-matter of the suit was within the jurisdiction of the Subordinate Judge, and his jurisdiction continued, whatever might be the result of the suit, in all such matters in the suit as were within his cognizance, amongst which were matters in execution in the suit. The mere circumstance that the amount actually due by process of accumulation exceeded Rs. 5,000 could not oust him from the jurisdiction he hitherto had over the suit.—*Shamráv Pandoji v. Niloji Ramji*, I. L. R., 10 Bom. 200. [Sep. 7, 1885.]

THE definition of "decree" in s. 2 of the Civil Procedure Code means that where the proceeding of the Court finally disposes of the suit, so long as it remains upon the record, it is a "decree." *Held* by the Full Bench that an order passed under s. 381 of the Civil Procedure Code, dismissing a suit for failure by the plaintiff to furnish security for costs as ordered, was the decree in the suit, and appealable as such, and consequently was not open to revision by the High Court under s. 622 of the Code.—*Williams (J. R.) v. Brown* (T. A.), I. L. R., 8 All. 108. [Jan. 23, 1886.]

A SUIT was instituted in the Court of a Munsif to recover from the defendants a sum of Rs. 49, being the amount due under a bond, and which the plaintiff alleged had been recovered on her account by one of the defendants from the obligor. The Munsif, being of opinion that the determination of the plaintiff's right to the bond involved the question of her heirship to the estate of a certain deceased person, and that consequently the case before him raised a question affecting the title to property exceeding Rs. 1,000 in value, held that he had no jurisdiction to entertain the suit, and accordingly returned the plaint for presentation to the proper Court under s. 57 of the Civil Procedure Code. *Held* by the Full Bench that the Munsif had acted upon an erroneous view, as the only subject-matter of the suit was the Rs. 49; that he had consequently failed to exercise a jurisdiction vested in him, and the High Court was therefore competent to revise his order under s. 622 of the Civil Procedure Code. The result of *Amir Hassan v. Sheo Baksh Singh* (I. L. R., 31 Cal. 6) and *Magni Ram v. Jiwa Lal* (I. L. R., 7 All. 336) is that the questions to which s. 622 of the Civil Procedure Code applies are questions of jurisdiction only. The meaning of the decision of the Privy Council in the former case is that, if the Court has jurisdiction to hear and determine a suit, it has jurisdiction to hear and determine all questions which arise in it, either of fact or law, and that

the High Court has no jurisdiction under s. 622 to inquire into the correctness of its view of the law, or the soundness of its findings as to facts; but that, when no appeal is provided, its decision on questions of both kinds is final. *Per* Straight and Tyrrell, J.J.—Clauses (a) and (b) of s. 584, specifying the grounds on which a second appeal lies to the High Court, embody what s. 622 refers to in the word “illegally;” that is to say, to cases where the Court below has, in the exercise of its jurisdiction, come to a decision which is contrary to some specified law of usage having the force of law, or failed to determine some material issue of law of usage. Clause (c) of s. 584 indicates the meaning of the words “material irregularity” in s. 622, *i.e.*, some material irregularity in procedure, “which may possibly have produced error or defect in the decision of the case upon the merits.” *Moulvi Muhammad v. Syed Husain* (I. L. R., 3 All. 203) referred to.—*Badami Kvar v. Dinu Rai*, I. L. R., 8 All. 111. [Jan. 27, 1886.]

A CLAIM by R to certain property which had been attached by B in the course of execution-proceedings in the Court of the First Subordinate Judge of Dacca having been rejected, R instituted a suit in the Court of the Second Subordinate Judge to establish his title to the property. In that suit he applied to the Court in which his suit was brought for an injunction under s. 492 of the Civil Procedure Code to stay the sale of the property attached by B in the execution-proceedings; but that application was rejected, and R thereupon applied for and obtained from the Court of the First Subordinate Judge an order staying the sale of the attached property until the hearing of the suit brought by him to establish his right to it. *Held*, in an application under s. 622 of the Code, to set the latter order aside, that s. 492 of the Code of 1882 has, and was intended to have, a wider application than s. 92 of Act VIII. of 1859 had, and provides a remedy where property is “in danger of being wrongfully sold;” if the circumstances justified it, an order could have been obtained under that section from the Court of the Second Subordinate Judge to stay the sale. There being this alteration in the law, and such a remedy provided, and no express provision in the Code for stay of execution by a Court executing a decree on the application of a third party, the order of the First Subordinate Judge was made without jurisdiction, and should be set aside.—*In the Matter of the Petition of Brojendra Kumar Rai Chowdhuri*, and *Brojendra Kumar Rai Chowdhuri v. Rup Lal Dass*, I. L. R., 12 Cal. 515. [Feb. 1, 1886.]

UNDER s. 622 of the Code of Civil Procedure, interlocutory orders passed under s. 387 refusing applications for the issue of a commission to examine witnesses, or, under s. 130, directing the production of documents, cannot be revised.—*In re Nizam of Hyderabad*, I. L. R., 9 Mad. 256. [Feb. 22, 1886.]

A SALE of the tenants' interest in certain land having taken place under ss. 39 and 40 of the Rent Recovery Act, the Deputy Collector refused to issue a sale-certificate to the purchaser on the ground that the sale had been irregularly conducted. *Held* that under s. 35 of the Rent Recovery Act the purchaser was entitled to a sale-certificate. *Held* further that the High Court had no power to review the proceedings of the Deputy Collector under s. 622 of the Code of Civil Procedure.—*Velli Periya Mira v. Moidin Padsha*, I. L. R., 9 Mad. 332. [Feb. 27, 1886.]

A MERELY erroneous construction of the provisions of an Act is not a ground for relief under s. 622 of the Civil Procedure Code. M J instituted an interpleader suit against two rival claimants, N and A, in respect of a sum of Rs. 20,000. R subsequently claimed a portion of the money, and applied to be made a party to the suit; but was opposed by M J and N. The Subordinate Judge refused the application on the ground that, though it was probably made under s. 32 of the Civil Procedure Code, R's right or claim not having been admitted by the plaintiff, nor asserted to his knowledge, she was not a necessary party under the special provisions of ch. 33 of the Civil Procedure Code, and referred her to a regular suit. *Held* that the order, though based upon an erroneous construction of the provisions of s. 32 of the Code, did not come within the scope of s. 622, inasmuch as it could not be said that the Subordinate Judge had failed to exercise a jurisdiction vested in him by law.—*Rabbaba Khanum v. Noor Jehan Begum, alias Darlim Shahiba*, I. L. R., 13 Cal. 96. [Mar. 12, 1886.]

THE Legal Practitioners' Act does not debar a pleader from recovering a fee from his client when no contract in writing is made. A Small Cause Court having dismissed a suit brought by a pleader to recover from his client a fee claimed for the conduct of a suit, on the ground that such a suit would not lie, because it was based on an oral contract, and such contract could not be enforced by reason of the provisions of the Legal Practitioners' Act, the High Court, under s. 622 of the Code of Civil Procedure, reversed the decree of the Small Cause Court.—*Bani v. Kunji*, I. L. R., 9 Mad. 375. [April 8, 1886.]

AN order of reference to arbitration was made on 21st January. Six weeks' time was allowed for the return of the award. No application was made for extension of time. The award having been returned on 8th May, the Court refused to give judgment in accordance with it under s. 622 of the Code of Civil Procedure on the ground that it was not valid. The plaintiffs now petitioned the High Court under s. 622 of the Code of Civil Procedure. *Held* that the award was invalid, and the Court had not failed to exercise jurisdiction within the meaning of s. 622 of the Code of Civil Procedure.—*Simson v. Venkatagopalam*, I. L. R., 9 Mad. 475. [April 12, 1886.]

WHERE an order was passed under s. 315 of the Code of Civil Procedure directing refund to a purchaser in execution of a decree in a suit in which a second appeal lay to the High Court, *Held* that, under s. 622 of the Code of Civil Procedure, the High Court could set aside the order because, the judgment-debtor having been found to have a saleable interest, the Lower Court had no power to order a refund.—*Kunhamod v. Chathu*, I. L. R., 9 Mad. 437. [April 16, 1886.]

R M, party to a suit, having authorised his agent to conduct the suit, the agent consented to the case being referred to arbitration by the Court. The arbitration was carried on to the knowledge and with the assent of R M. On an application by R M under s. 622 of the Code of Civil Procedure, to set aside the award made by the arbitrators on the ground (1) that his pleader had not been authorised in writing, as required by s. 506 of the Code, to apply for arbitration, and (2) that he himself had not consented to the reference. *Held* that, under the circumstances, R M was not entitled to relief.—*Unniraman v. Chathan*, I. L. R., 9 Mad. 451. [July 12, 1886.]

The words, "a material irregularity," in s. 622 of the Code of Civil Procedure, include an irregularity of procedure materially affecting the merits of the case. An application of a section of the Code to a case to which it does not apply is a material irregularity within the meaning of the section. *Magui Ram v. Jiwa Lal* (I. L. R., 7 All. 336) observed on.—*Sew Bux Bogla v. Shib Chunder Sen*, I. L. R., 13 Cal. 225. [July 30, 1886.]

THE words of s. 295 of the Code of Civil Procedure, "assets realized by sale or otherwise in execution of a decree," provide only for a case where, by the process of the Court in execution of a decree, property has become available for distribution amongst judgment-creditors. The words "by sale or otherwise" should be construed as meaning by sale or by other process of execution provided for by the Civil Procedure Code.—*Sew Bux Bogla v. Shib Chunder Sen*, I. L. R., 13 Cal. 225. [July 30, 1886.]

A, AND subsequently B, obtained decrees against X, in execution of which the same land was attached, and B obtained an order for rateable distribution. Neither decree was satisfied. A then applied for attachment of other property, and the sale was fixed for 28th September. On 26th September B filed a petition for further attachment under ss. 250, 274, and also a petition for rateable distribution under s. 295 of the Code of Civil Procedure. The District Judge rejected the application for execution as being too late, and then the application under s. 295, because no application for execution was pending. *Held*, on appeal, that the petition for execution was wrongly rejected, but that the High Court could not, under s. 622 of the Code of Civil Procedure, revise the order rejecting the application under s. 295 for rateable distribution.—*Venkataraman v. Mahalingayyan*, I. L. R., 9 Mad. 508. [Aug. 4, 1886.]

APPLICATIONS to the Court under s. 206 of the Code of Civil Procedure are not governed by the Limitation Act. A Small Cause Court rejected an application made under s. 206 of the Code of Civil Procedure to bring a decree into conformity with the judgment, on the ground that a former application had been dismissed for default, and the petitioner was bound to apply within one month from the date of dismissal, and was now too late. On an application to the High Court under s. 622 of the Code to set aside this order, *Held* that the High Court could not interfere.—*Jivrajji v. Pragji*, I. L. R., 10 Mad. 51. [Sep. 24, 1886.]

WHERE a District Court, purporting to act under s. 4 of Act XIX, of 1841, directed an inventory of the estate of a deceased person to be taken without conforming to the requirements of s. 3 of that Act, the High Court set aside the order under s. 622 of the Code of Civil Procedure as made without jurisdiction.—*Abdul Rahiman v. Kutti Ahmed*, I. L. R., 10 Mad. 68. [Oct. 1, 1886.]

HELD by Edge, C.J., and Oldfield and Brodhurst, JJ., that under s. 15 of 24 and 25 Vic., c. 194, it is competent to the High Court, in the exercise of its power of superintendence, to direct a Subordinate Court to do its duty or to abstain from taking action in matters of which it has no cognizance; but the High Court is not competent, in the exercise of this authority, to interfere with and set right the orders of a Subordinate Court

on the ground that the order of the Subordinate Court has proceeded on an error of law or an error of fact. The High Court's power to direct a Subordinate Judge to do his duty is not limited to cases in which such Judge declines to hear or determine a suit or application within his jurisdiction. *Held* by Straight and Tyrrell, *J.J.*, that the word "superintendence" used in s. 15 of the Charter Act contemplated and now includes powers of a judicial or quasi-judicial character, apart from those conferred on the Court by s. 622 of the Civil Procedure Code; but that the last mentioned provision may properly be accepted as indicating the extent to which the Court should ordinarily interfere with the findings of such subordinate tribunals as are invested with exclusive jurisdiction to try and determine all questions of law and fact arising in suits within their exclusive cognizance, and in which their decisions are declared by law to be final. *Tej Ram v. Harsukh* (I. L. R., 1 All. 101, at I. L. R., 1 All. 104-105), *Girdhari Singh v. Hurdeo Narain Singh* (L. R., 3 Ind. App. 280), and in the Matter of the Petition of Mathra Parshad (I. L. R., 1 All. 296), referred to. The judgment of Petheram, C.J., in *Badami Kuar v. Dina Rai* (I. L. R., 8 All. 111) explained.—*Muhammad Suleman Khan v. Fatima*, I. L. R., 9 All. 104. [Nov. 17, 1886.]

AN order passed under s. 18 of Act XX. of 1863, refusing leave to sue, is not appealable, nor, if the Judge has exercised his discretion, liable to revision under s. 622 of the Code of Civil Procedure.—*In re Venkateswaru*, I. L. R., 10 Mad. 98. [Nov. 25, 1886.]

THE deposit under s. 174 of the Tenancy Act must be of such a nature as to be at once payable to the parties, and a Court has no power to set aside a sale under that section unless the judgment-debtor has complied strictly with its provisions.—*Rahim Bux v. Nundo Lal Gossain*, I. L. R., 14 Cal. 321. [Feb. 2, 1887.]

A JUDGE has no jurisdiction to pass, in a contested suit, a decree adverse to the defendant where there is no evidence or admission before him to support the decree, and where the burden of proof is not or has not continued to be upon the defendant. If he passes such a decree, it is liable to be set aside in revision under s. 622 of the Civil Procedure Code. *Maulvi Muhammad v. Syed Hicain* (I. L. R., 3 All. 203) and *Sarnam Tewari v. Sakina Bibi* (I. L. R., 3 All. 417) referred to. S hired a horse from W, and while it was in his custody it died from rupture of the diaphragm, which was proved to have been caused by over-exertion on a full stomach. In a suit by W against S to recover the value of the horse, the defendant gave evidence to the effect that the horse became restive and plunged about, that he might then have touched it with his riding cane, that it shortly afterwards again became excited, bolted for two miles, and at last fell down and died. This evidence was not contradicted on any point, nor was any other evidence offered as to how the horse came to run away. There was evidence that the horse was a quiet one, that for some time previously it had done hardly any work, that it was fed immediately before it was let out for hire, and that rupture of the diaphragm was a likely result of the horse running away while its stomach was distended with food. The Court of first instance held that the defendant was bound to prove that he had taken such care of the horse as a man of ordinary prudence would under similar circumstances have taken of his own property, that he must have used his whip freely, or done something else which caused the horse to bolt, and that in so doing he had acted without reasonable care, and had thus caused the animal's death. The Court accordingly decreed the claim. *Held* by Edge, C.J., that if the burden of proof was originally upon the defendant, it was shifted by the explanation which he gave, and which was neither contradicted nor *prima facie* improbable; and that the decree of the lower Court, being unsupported by any proof, and based on speculation and assumption, was one which that Court had no jurisdiction to pass, and should consequently be set aside in revision under s. 622 of the Civil Procedure Code. *Per* Brodhurst, J., that as the decree was not only unsupported by proof, but opposed to the evidence on the record, the lower Court had "acted in the exercise of its jurisdiction illegally," within the meaning of s. 622. *Collins v. Bennett* (46 New York Reports), *Byrne v. Ruddle* (2 H. and C. 722; 33 L. J. Each 18), *Gee v. Metropolitan Railway Company* (L. R., 82 B. 161; 42 L. J., 2 B. 105), *Scott v. London Dock Company* (3 H. and C. 596; 34 L. J. Each 220), *Manzoni v. Douglas* (6 Q. B. D. 145), *Cotton v. Wood* (8 C. B., N. S., 569; 29 L. J. C. P. 333), *Davey v. London and South-Western Railway Company* (12 Q. B. D. 70), and *Hammack v. White* (11 C. B. N. S. 588; 31 L. J. C. P. 129), referred to.—*Shields v. Wilkinson*, I. L. R., 9 All. 898. [Feb. 10, 1887.]

THE question of the burden of proof in cases of accidental injury to goods bailed depends upon the particular circumstances of each case. In some cases, from the nature of the accident, it lies upon the bailee to account for its occurrence, and thus to show that it has not been caused by his negligence. In such cases it is for him to give a *prima facie* explanation in order to shift the burden of proof to the person who seeks to make him

liable. If he gives an explanation which is uncontradicted by reasonable evidence of negligence, and is not *prima facie* improbable, the Court is bound in law to find in his favour, and the mere happening of the accident is not sufficient proof of negligence. S hired a horse from W, and while it was in his custody it died from rupture of the diaphragm, which was proved to have been caused by over-exertion on a full stomach. In a suit by W against S to recover the value of the horse, the defendant gave evidence to the effect that the horse became restive and plunged about, that he might then have touched it with his riding-cane, that it shortly afterwards again became excited, bolted for two miles, and at last fell down and died. This evidence was not contradicted on any point, nor was any other evidence offered as to how the horse came to run away. There was evidence that the horse was a quiet one, that for some time previously it had done hardly any work, that it was fed immediately before it was let out for hire, and that rupture of the diaphragm was a likely result of the horse running away while its stomach was distended with food. The Court of first instance held that the defendant was bound to prove that he had taken such care of the horse as a man of ordinary prudence would under similar circumstances have taken of his own property, that he must have used his whip freely, or done something else which caused the horse to bolt, and that in so doing he had acted without reasonable care, and had thus caused the animal's death. The Court accordingly decreed the claim. *Held* by Edge, C.J., that if the burden of proof was originally upon the defendant, it was shifted by the explanation which he gave, and which was neither contradicted nor *prima facie* improbable; and that the decree of the lower Court, being unsupported by any proof, and based on speculation and assumption, was one which that Court had no jurisdiction to pass, and should consequently be set aside in revision under s. 622 of the Civil Procedure Code. *Per* Brodhurst, J., that as the decree was not only unsupported by proof, but opposed to the evidence on the record, the lower Court had "acted in the exercise of its jurisdiction illegally," within the meaning of s. 622.—*Shields v. Wilkinson*, I. L. R., 9 All. 398. [Feb. 10, 1887.]

PART VIII.

CHAPTER XLVII.

OF REVIEW OF JUDGMENT.

Application for review of judgment. **623.** Any person considering himself aggrieved— Extending to Provincial S. C. Courts.

(a) by a decree or order from which an appeal is hereby allowed, but from which no appeal has been preferred;

(b) by a decree or order from which no appeal is hereby allowed; or

(c) by a judgment on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge, or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him,

may apply for a review of judgment to the Court which passed the decree or made the order, or to the Court (if any) to which the business of the former Court has been transferred.

A party who is not appealing from a decree may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except when the ground of such appeal is common to the applicant and the appellant, or when, being a respondent, he can present to the Appellate Court the case on which he applies for the review.

WHERE a Judge allowed a review of his predecessor's judgment on the sole ground that it appeared to him that the judgment of his predecessor had done injustice, *held* by the High Court (Morgan, C.J., and Innes, J.) that though the generality of the terms

used in the sections of the Procedure Code, Act VIII. of 1859, relating to review of judgment, *viz.*, "other good and sufficient reason" (see 376) and "otherwise requisite for the ends of justice" (see 378), confers a wide jurisdiction, this jurisdiction could not be held to authorize a Judge to revise and reverse his predecessor's decree on the ground above-mentioned. If the review is asked for in reference to the conclusions of fact drawn from the evidence, it should not be granted simply upon the same evidence. *Reasut Hossein v. Hadjee Abdoolah* (I. L. R., 2 Cal. 131, P. C.) discussed.—*Rámfán v. Karunatha Tharakan*, I. L. R., 2 Mad. 10. [Oct. 11, 1878.]

THE order passed under the above section can be reviewed under Act X. of 1877, s. 623.—*Smith Eliza v. Secretary of State*, I. L. R., 3 Cal. 340. [Mar. 4, 1878.]

THE absence of a formal finding on an issue tried and decided by a High Court of first instance is not an error calling for review of judgment in the High Court. A party who not only had an opportunity of raising a question, but who did raise it in appeal, and on argument abandoned it, cannot, under ordinary circumstances, be allowed to agitate the question on review.—*Sabápathi v. Subráya and Rámanátha*, I. L. R., 2 Mad. 58. [Oct. 16, 1878.]

APPLICATIONS for the extension of the period for the submission of an award, and orders thereon, should be made in writing and recorded. When a party has been prejudiced by having the time allowed for taking objections to an award curtailed by the Court, no appeal lies, but a review should be granted by the Court of first instance.—*Monji Premji Set v. Maliyakel Koyassan Koya Ifaji*, I. L. R., 3 Mad. 59. [Jan. 27, 1880.]

THE notice-clause in s. 21, Act XI. of 1865, is applicable only to those cases where a new trial cannot be applied for within seven days after the judgment, in consequence of there being no sitting of the Court. Where the application is made within seven days, the notice is unnecessary. If the grounds upon which the new trial is moved are proper grounds for granting a review, the applicant is entitled to proceed under s. 623 of the Code of Civil Procedure without resorting to Act XI. of 1865.—*Ratan Krishen Poddar v. Raghoo Nath Shaha*, I. L. R., 8 Cal. 287. [Dec. 8, 1881.]

THE term "made" in s. 624 of the Civil Procedure Code does not mean "presented," but means and includes the hearing and determination of the application for review of judgment. *Held*, therefore, where an application for a review of judgment on the ground, not of the discovery of new and important matter or evidence as mentioned in s. 623 of the Civil Procedure Code, or of a clerical error apparent on the face of the decree, but on other grounds, was presented to the District Judge who delivered the judgment, and such Judge was transferred before he could entertain such application, that his successor was not competent to entertain it.—*Pancham v. Jhinguri* and another, I. L. R., 4 All. 278. [Feb. 4, 1882.]

A DIVISIONAL Bench of the High Court sitting as a Court of second appeal, being of opinion that the Court of first appeal had omitted to determine a certain issue of fact, determined such issue itself, and decided the appeal in accordance with its determination of such issue. An application for review of judgment was made on two grounds, *viz.*, (i.) that the Bench was wrong in thinking that such issue had not been determined by the Court of first appeal, and (ii.) that the Bench sitting as a Court of second appeal was not empowered to determine an issue of fact which the Court of first appeal had omitted to determine, but should have referred such issue to that Court for determination under s. 566 of the Civil Procedure Code. *Held* that, looking to the provisions of that Code relating to review of judgment, such application ought not to be allowed on the grounds mentioned, which virtually disclosed reasons for appeal from the judgment.—*Sheo Ratan Bai v. Lappu Kuar*, I. L. R., 5 All. 14. [July 19, 1882.]

HAVING regard to the decisions in *Nánábhái v. Náthábhái* (9 Bom. H. C. R. 89) and *Naráyan v. Dávuđbhái* (9 Bom. H. C. R. 238), and the uniform practice in accordance with them which had since obtained, and the practical similarity on this point of Act X. of 1877, s. 623, and Act VIII. of 1859, s. 373 (on which the cases above-mentioned were decided), the High Court allowed the appellant to withdraw his second appeal, after it had been argued, though not decided, in order that he might apply to the lower Court for a review of its judgment on the ground of the discovery of new evidence. The appellant to pay the respondent's costs of appeal.—*Pandu v. Devji*, I. L. R., 7 Bom. 287. [Mar. 8, 1883.]

It is competent to a party against whom an *ex-parte* decree has been made to apply for review of judgment.—*Bibi Mutto v. Ilahi Begam*, I. L. R., 6 All. 65. [Aug. 17, 1883.]

ALTHOUGH the discovery of a new ruling may not entitle a party to a review of judgment, yet when a Court is satisfied that this judgment has proceeded upon an erroneous view of the law, the provisions of s. 623 of the Code of Civil Procedure allow a review of judgment. Where a decree-holder applied to the Court to transmit the decree to another Court for execution, and on a subsequent date paid into Court postage-stamps for the transmission of the records. *Held* that if when the postage-stamps were paid into Court an application was made to take some step in aid of execution, such application would be sufficient to give a new period of limitation.—*Vollaya v. Jaganatha*, I. L. R., 7 Mad. 807. [Dec. 14, 1883.]

A LOWER Court admitted a review of judgment on the ground that the decision of a Divisional Bench of the High Court, which it had followed in that judgment, had subsequently been overruled by the Full Bench. *Held* that the lower Court was not authorized to admit a review of judgment on such ground.—*Amrit Lal v. Madho Das*, I. L. R., 6 All. 292. [April 17, 1884.]

FOR the purpose of setting aside a decree passed in pursuance of a compromise come to out of Court, there are two available modes of procedure: (1) by suit; (2) by a review of the judgment sought to be set aside; the latter being the more regular mode of procedure. *Lalji Sahu v. Collector of Tirhoot* (6 B. L. R. 649), *Mewah Lal Thakur v. Bhujun Jha* (13 B. L. R. Ap. 11), *Gilbert v. Eudean* (L. R. 9 Ch. D. 259) followed.—*Aushootosh Chandra v. Taraprasanna Roy*, I. L. R., 10 Cal. 612. [April 24, 1884.]

S. 624 of the Code of Civil Procedure must be read as a proviso to s. 623. *Held*, therefore, that, when a Court had been abolished, and its business transferred to a Court presided over by another Judge, such Judge should not entertain an application for review of judgment except in the case provided for by s. 624.—*Sarangapani v. Narayanasami*, I. L. R., 8 Mad. 567. [April 17, 1885.]

THE High Court has no power to review a judgment passed by it on a reference from a Subordinate Judge with Small Cause Court powers. Cl. c of s. 623 of the Code of Civil Procedure (Act XIV. of 1882) allows of a review of judgment on a reference only from a Court of Small Causes. The judgment of the High Court in such a case is not a decree or order within the meaning of cl. b of the section, but is simply a statement of the grounds, in conformity with which the lower Court is to dispose of the case, as provided by s. 619.—*Ramchandra Babaji v. Sitaram Vinayak*, I. L. R., 10 Bom. 68. [July 23, 1885.]

ON 4th June 1879, one Ambaram obtained a Small Cause Court decree against Bai Dhiraj, the widow of the opponent's separated brother, and on the 17th November 1881 assigned it to the applicant. Immediately after the assignment the applicant applied to the Court for execution, which was ordered under s. 232 of the Civil Procedure Code (Act XIV. of 1882)—neither Ambaram nor Bai Dhiraj having appeared to object to it, though notice of the applicant's application was given to them. The applicant, accordingly, on 6th February 1882, recovered Rs. 10 from Bai Dhiraj in execution. Shortly afterwards, Bai Dhiraj died, and the applicant applied for further execution of the decree against the opponent as her legal representative. The opponent admitted that he was her heir, but objected to the execution, on two grounds, *viz.*: (1) that the decree had already been satisfied, and (2) that the transfer of the decree was fraudulent and collusive. The lower Court rejected the application for execution, holding, as to the alleged satisfaction, that it could not be recognized, as it was made out of Court; but, as to the second objection, that though the sale was duly effected, there was fraud and collusion in the assignment of the decree. The applicant thereupon applied to the High Court. *Held* that the applicant was entitled to execution. As to the first objection, the decision of the lower Court was right. As to the second objection, there was no evidence of fraud or collusion; and the Court having found that the sale was duly effected, the applicant had the same right to execute the decree as the transferor Ambaram had. If the judgment-debtor had been alive, she could not have resisted the execution, and, as her legal representative, the opponent did not stand in any better position. The Court was bound to execute its own decree, it being unreversed and in full force.—*Mulchand Ranchoddas v. Chhagan Narau*, I. L. R., 10 Bom. 74. [Aug. 6, 1885.]

Per CURIAM.—*Held* on the facts that there was no "sufficient cause" for not making an application for review within the time limited by s. 5 of the Limitation Act, 1877.—*Gopal Chandra Lahiri v. Solomon*, I. L. R., 13 Cal. 62. [Feb. 26, 1886.]

S. 647 of the Civil Procedure Code provides for the procedure to be followed in miscellaneous matters other than suits and appeals, and its provisions, read with ss. 545 and 546, give no power to the Court or a Judge, after the passing of a final unappealable decree,

and before the granting of an application for review of judgment, to order a stay of execution of the decree. No such power exists under the Code. S. 622 gives a more extensive right of review than existed in England, where a review could only be obtained by showing that there was apparent on the record error in law, or that new and relevant matter had been discovered after the judgment which could not possibly have been used when the judgment was given, or that judgment was obtained by fraud. The words "or for any other sufficient reason" mean that the reason must be one sufficient to the Court or Judge to whom the application for review is made, and they cannot be held to be limited to the discovery of new and important matter or evidence, or of the occurring of a mistake or error apparent on the record. Whether or not there is in such cases "any other sufficient reason" may depend on a question of law or a question of fact, or a mixed question of law and fact. *Peasat Hosein v. Hadjee Abdoolah* (I. L. R., 3 Ind. Ap. 221) referred to. In cases where a stay of execution or an injunction is granted on an *ex-parte* application, liberty to apply to the Judge to vary or set aside his order must be implied, if not expressed. *Fritz v. Hobson* (L. R., 14 Ch. Div. 542) referred to. On the 29th July 1886, an application was made by a party against whom the High Court, on second appeal, had passed a decree, dated the 18th March 1886, for review of judgment. On the 28th August, the applicant made a further application that execution of the decree might be stayed pending the determination of the application for review, and an order was passed *ex parte* granting this application. Subsequently, the opposite party applied under s. 623 of the Civil Procedure Code for a review of the *ex-parte* order on the grounds (i) that the Court had no jurisdiction to make it, and (ii) that the application of the 29th July was beyond time, and therefore there could be no review of judgment, and no order for stay of execution pending such review. *Held* that the Court had power, under s. 623 of the Code, to review the *ex parte* order of the 28th August, and that such order had been made without jurisdiction, and ought to be reviewed. *Held* that the decree of the 18th March being final and unappealable, and no application for review of judgment having been granted within the meaning of s. 630 of the Code, the application for stay of execution did not fall within s. 545 or 546, nor did s. 647 apply to it, nor any other provision of the Code. *Held* that, having regard to the circumstances that the order of the 28th August was made without jurisdiction, and upon an *ex-parte* application, of which the opposite party had no notice, and interfered perhaps indefinitely with his right to obtain the money in Court under the final and unappealable decree in his favour, as to which no application for review had been granted, and that the application for review of judgment was made after the statutory period of ninety days had expired, and contained no explanation of the delay, sufficient reason for reviewing the order of the 28th August had been shown.—*Amir Hasan v. Ahmed Ali*, I. L. R., 9 All. 36. [Sep. 13, 1886.]

AN appeal which was referred to the Full Bench for disposal was heard and determined by the Full Bench, and judgment given in favour of the appellant in the absence of the respondent. Subsequently the respondent applied for a review of judgment, and proved that his absence at the hearing before the Full Bench was due to a mistake which had been made in not serving him with notice of the reference. *Held* by the Full Bench that, under the circumstances, the applicant's absence at the hearing came within the words "any other sufficient reason" in s. 623 of the Civil Procedure Code, and the review should be granted and the appeal re-heard. Upon the hearing of an application for review of judgment, upon which an order has been passed directing the opposite party to show cause why the application should not be granted, counsel for the opposite party should begin.—*Ghansham Singh v. Lal Singh*, I. L. R., 9 All. 61. [Nov. 15, 1886.]

Per GARTH, C.J.—Although it is difficult and perhaps undesirable to attempt to define precisely the meaning of the words "any other sufficient reason" in s. 623 of the Civil Procedure Code, yet from the earlier part of the clause it is clear that a point which might have been, but which was not, discovered at the trial by the exercise of due diligence, was not intended by the section to afford any sufficient reason for review. *Per Wilson, J.*—*Serjeant*—If at a trial all parties, counsel on both sides, and the Judge, are under a misapprehension as to the contents of a document, or, even if the Judge alone is misled on such a point, and in consequence a wrong decree is made, the mistake ought to be corrected on review.—*Gopal Chundra Lahiri v. Solomon*, I. L. R., 13 Cal. 62. [Feb. 26, 1887.]

624. Except upon the ground of the discovery of such new and important

To whom applications for any matter or evidence as aforesaid, or of some review may be made. clerical error apparent on the face of the decree, no application for a review of judgment, other than that of a High Court, shall be made to any Judge other than the Judge who delivered it.

A JUDGE of a Mufassal Small Cause Court has jurisdiction to direct a new trial of a case tried by his predecessor, s. 21 of Act XI. of 1865 not having been repealed by the

Civil Procedure Code (Act X. of 1877). *Per* Garth, C.J.—The Judge, however, in dealing with applications for new trial under s. 21, should have regard to the rule laid down in s. 624 of the Code of Civil Procedure.—*Shumsher Ally v. Kurkut Shah*, I. L. R., 6 Cal. 286. [July 19, 1880.]

THE term “made” in s. 624 of the Civil Procedure Code does not mean “presented,” but means and includes the hearing and determination of the application for review of judgment. *Held*, therefore, where an application for a review of judgment on the ground, not of the discovery of new and important matter or evidence as mentioned in s. 623 of the Civil Procedure Code, or of a clerical error apparent on the face of the decree, but on other grounds, was presented to the District Judge who delivered the judgment, and such Judge was transferred before he could entertain such application, that his successor was not competent to entertain it.—*Pancham v. Jhinguri and another*, I. L. R., 4 All. 78. [Feb. 4, 1882.]

AN application for review of judgment, upon a ground other than those mentioned in s. 624 of the Civil Procedure Code, if presented to the Judge who delivered it, and who thereupon directs office to be given to the opposite party, may be heard and disposed of by his successor, *Pancham v. Jhinguri* (I. L. R., 4 All. 278, *supra*), dissented from.—*Karoo Singh v. Deo Narain Shgh*, I. L. R., 10 Cal. 80. [Aug. 15, 1883.]

No second appeal lies against an order passed under s. 629 of the Civil Procedure Code. An application was made by a plaintiff for review of a judgment dismissing his suit as against all the defendants, which application was granted. Against that order the defendant appealed, and the lower Appellate Court confirmed the lower Court's order granting the review as against one of the defendants, but set it aside as against the other defendants. *Held* that no second appeal lay against such order.—*Than Singh v. Chundun Singh*, I. L. R., 11 Cal. 269. [Feb. 11, 1885.]

S. 624 of the Code of Civil Procedure must be read as a proviso to s. 633. *Held*, therefore, that, when a Court had been abolished, and its business transferred to a Court presided over by another Judge, such Judge should not entertain an application for review of judgment except in the case provided for by s. 624.—*Sarangapani v. Narayanasami*, I. L. R., 8 Mad. 567. [April 17, 1885.]

WHEN an application for review is presented to the Judge who made the decree, and he thereupon issues notice to the other side, the application is “made” to him within the meaning of s. 624 of the Civil Procedure Code, and may be heard and disposed of by his successor in office. *Karoo Singh v. Deo Narain Sing* (I. L. R., 10 Cal. 80) followed.—*Fazel Biswas v. Jamadar Sheikh*, I. L. R., 13 Cal. 231. [June 24, 1886.]

625. The rules hereinbefore contained as to the form of making

Form of applications for review. appeals shall apply, *mutatis mutandis*, to applications for review.

AN order made under Act X. of 1877, s. 409, refusing leave to sue as a pauper, is subject to review under s. 623. The provisions of s. 413 do not affect the right of a person against whom such order has been made to obtain a review. A petitioner applying for such review must file a copy of the order of which he seeks a review, together with a memorandum of objections (ss. 541 and 625).—*Adarji Edulji v. Manikji Edulji*, I. L. R., 4 Bom. 414. [July 12, 1880.]

Application when rejected.

626. If it appears to the Court that there is not sufficient ground for a review, it shall reject the application. Extending to Provincial S. Courts.

If the Court be of opinion that the application for the review should

Application when granted.

be granted, it shall grant the same, and the Judge shall record with his own hand his reasons for such opinion :

Proviso.

Provided that—

(a) no such application shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the decree a review of which is applied for ; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him, when the decree or order was passed, without strict proof of such allegation.

The Judge of a Mufassal Small Cause Court may grant an application for a review of judgment under Act X. of 1877.—*Isan Chunder Banerjee v. Luchun Gope*, I. L. R., 5 Cal. 699. [Jan. 29, 1880.]

An application under s. 311 of Act X. of 1877 to set aside a sale in execution of a decree having been made by the judgment-debtor, the Court executing the decree (Subordinate Judge) disallowed the objections, and passed an order confirming such sale. The judgment-debtor subsequently applied to the Subordinate Judge for a review of judgment. The Subordinate Judge, without recording his reasons for granting such application, irregularly proceeded at once to pass an order setting aside such sale, without cancelling the previous order confirming it. The auction-purchaser appealed to the District Judge. That officer, treating the appeal as one from an order granting an application for review of judgment, entertained it, and set aside the Subordinate Judge's second order. *Held* that the District Judge was not justified in entertaining such appeal, such order not being one granting an application for review, but one setting aside a sale, and as such not appealable. Before a review of judgment is granted, an order granting the application for review, and the reasons for granting the same, should be recorded.—*Bhairon Din Singh v. Ram Sahai*, I. L. R., 3 All. 316. [Nov. 9, 1880.]

No second appeal lies against an order passed under s. 629 of the Civil Procedure Code. An application was made by a plaintiff for review of a judgment dismissing his suit as against all the defendants, which application was granted. Against that order the defendant appealed, and the lower Appellate Court confirmed the lower Court's order granting the review as against one of the defendants, but set it aside as against the other defendants. *Held* that no second appeal lay against such order.—*Than Singh v. Chundun Singh*, I. L. R., 11 Cal. 296. [Feb. 11, 1885.]

627. If the Judge or Judges, or any one of the Judges, who passed the decree or order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause, for a period of six months next after the application, from considering the decree or order to which the application refers, such Judge or Judges, or any of them, shall hear the application, and no other Judge or Judges of the Court shall hear the same.

628. If the application for a review be heard by more than one Judge, and the Court be equally divided, the application shall be rejected.

If there be a majority, the decision shall be according to the opinion of the majority.

629. An order of the Court for rejecting the application shall be final; but whenever such application is admitted, the admission may be objected to, on the ground that it was—

- (a) in contravention of the provisions of section 624,
- (b) in contravention of the provisions of section 626, or
- (c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be made at once by an appeal against the order granting the application, or may be taken in any appeal against the final decree or order made in the suit.

Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, if it be proved to the satisfaction of the

Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court may order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit; and shall appoint 2 day for hearing the same.

No order shall be made under this section unless the applicant has served the opposite party with notice in writing of the latter application.

No application to review an order passed on review or on an application for a review shall be entertained.

AN application under s. 311 of Act X. of 1877 to set aside a sale in execution of decree having been made by the judgment-debtor, the Court executing the decree (Subordinate Judge) disallowed the objections, and passed an order confirming such sale. The judgment-debtor subsequently applied to the Subordinate Judge for a review of judgment. The Subordinate Judge, without recording his reasons for granting such application, irregularly proceeded at once to pass an order setting aside such sale, without cancelling the previous order confirming it. The auction-purchaser appealed to the District Judge. That officer, treating the appeal as one from an order granting an application for review of judgment, entertained it, and set aside the Subordinate Judge's second order. *Held* that the District Judge was not justified in entertaining such appeal, such order not being one granting an application for review, but one setting aside a sale, and as such not appealable. Before a review of judgment is granted, an order granting the application for review and the reasons for granting the same should be recorded.—*Bhairon Din Singh v. Ram Sahai*, I. L. R., 3 All. 316. [Nov. 9, 1880.]

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S. 15 of the Letters Patent for the High Court of Judicature at Madras which allows an appeal to the High Court from the judgment of one Judge of that Court, is controlled by s. 629 of the Code of Civil Procedure, which provides that an order of a Civil Court rejecting an application for review of judgment shall be final.—*Achaya v. Rainavélu*, I. L. R., 9 Mad. 253. [Oct. 27, 1885.]

630. When an application for a review is granted, a note thereof shall be made in the register, and the Court may at once re-hear the case, or make such order in regard to the re-hearing as it thinks fit.

Extending to
Provincial S.
C. Courts.

WHERE a review of judgment is granted on a particular ground, the Court is not bound to re-hear the whole case under s. 630 of the Civil Procedure Code; it is in the discretion of the Court to re-hear the whole case, or only the particular point on which the review has been granted.—*Hurbans Sahye v. Thakoor Purshad*, I. L. R., 9 Cal. 209. [Mar. 2, 1882.]

PART IX.

CHAPTER XLVIII.

SPECIAL RULES RELATING TO THE CHARTERED HIGH COURTS.

631. This chapter applies only to High Courts which are or may hereafter be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104 (*An Act for establishing High Courts of Judicature in India*).

Chapter to apply only to certain High Courts.

Application of Code to
High Courts.

632. Except as provided in this chapter, the provisions of this Code apply to such High Courts.

S. 15 of the Letters Patent for the High Court of Judicature at Madras, which allows an appeal to the High Court from the judgment of one Judge of that Court, is controlled by s. 629 of the Code of Civil Procedure, which provides that an order of a Civil Court rejecting an application for review of judgment shall be final.—*Achaya v. Ratnaveluxi*, L. R., 9 Mad. 253. [Oct. 27, 1885.]

THE intention of the Legislature as expressed in s. 633 of the Civil Procedure Code was that the High Court might frame rules as to how its judgments should be given, whether orally or in writing, or according to any mode which might appear to it best in the interests of justice. The section does not merely give the High Court power to direct that judgments shall be recorded in a particular book, or with a particular seal. Rule 9 of the rules made under s. 633 in March 1885 is therefore not *ultra vires* of the Court, and it modifies the provisions of s. 574 in their application to judgments of the High Court. With reference to the terms of rule 9, it is not necessary in a case where the High Court substantially adopts the whole judgment of the Court below to go through the formality of re-stating the points at issue, the decision upon each point, and the reasons for the decision. *Per* Edge, C.J.—Apart from rule 9, it never was intended that s. 574 of the Code should apply to cases where the High Court having heard the judgment of the Court below, and arguments thereon, comes to the conclusion that both the judgment and the reasons which it gives are completely satisfactory, and such as the High Court itself would have given. Assuming the provisions of s. 574 to be applicable, a judgment of the High Court stating merely that the appeal must be dismissed with costs and the judgment of the first Court affirmed, and that it was unnecessary to say more than that the Court agreed with the Judge's reasons, is a substantial compliance with those provisions. The judgment of the High Court in a first appeal was as follows: "This appeal must, in my opinion, be dismissed with costs, and the judgment of the first Court affirmed; and I do not think it necessary to say more than that we agree with the Judge's reasons." The appellant applied for leave to appeal to Her Majesty in Council on the ground that the requirements of s. 574 of the Civil Procedure Code had not been complied with. *Held* by the Full Bench that the objection involved no substantial question of law, and that the application for leave to appeal must therefore be rejected.—*Sundar Bibi v. Bisheshar Nath*, L. R., 9 All. 93. [Nov. 15, 1886.]

High Court to record judgments according to its own rules.

633. The High Court shall take evidence, and record judgments and orders, in such manner as it by rule from time to time directs.

THE intention of the Legislature as expressed in s. 633 of the Civil Procedure Code was that the High Court might frame rules as to how its judgments should be given, whether orally or in writing, or according to any mode which might appear to it best in the interests of justice. The section does not merely give the High Court power to direct that judgments shall be recorded in a particular book, or with a particular seal. Rule 9 of the rules made under s. 633 in March 1885 is therefore not *ultra vires* of the Court, and it modifies the provisions of s. 574 in their application to judgments of the High Court. With reference to the terms of rule 9, it is not necessary, in a case where the High Court substantially adopts the whole judgment of the Court below, to go through the formality of re-stating the points at issue, the decision upon each point, and the reasons for the decision. *Per* Edge C.J.—Apart from rule 9, it never was intended that s. 574 of the Code should apply to cases where the High Court having heard the judgment of the Court below, and arguments thereon, comes to the conclusion that both the judgment and the reasons which it gives are completely satisfactory, and such as the High Court itself would have given. Assuming the provisions of s. 574 to be applicable, a judgment of the High Court stating merely that the appeal must be dismissed with costs and the judgment of the first Court affirmed, and that it was unnecessary to say more than that the Court agreed with the Judge's reasons, is a substantial compliance with those provisions. The judgment of the High Court in a first appeal was as follows: "This appeal must, in my opinion, be dismissed with costs, and the judgment of the first Court affirmed; and I do not think it necessary to say more than that we agree with the Judge's reasons." The appellant applied for leave to appeal to Her Majesty in Council on the ground that the requirements of s. 574 of the Civil Procedure Code had not been complied with. *Held* by the Full Bench that the objection involved no substantial question of law, and that the application for leave to appeal must therefore be rejected. *Sundar Bibi v. Bisheshar Nath*, L. R., 9 All. 93. [Nov. 15, 1886.]

634. Whenever a High Court considers it necessary that a decree made in the exercise of its ordinary original civil jurisdiction should be enforced before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs; and, as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

635. Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its ordinary original civil jurisdiction, or to examine witnesses, except when the Court shall have, in the exercise of the power conferred by its charter, authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils, and attorneys.

636. Notice to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the ordinary or extraordinary original civil jurisdiction of the High Court, and of its matrimonial, testamentary, and intestate jurisdictions, except summonses to defendants issued under section 64, writs of execution, and notices under section 553, may be served by the attorneys in the suit, or by persons employed by them, or by such other persons as the High Court by any rules or order from time to time directs.

637. Any non-judicial or quasi-judicial act which this Code requires to be done by a Judge, and any act which may be done by a Registrar, done by a Commissioner appointed to examine and adjust accounts under section 394, may be done by the Registrar of the Court, or by such other officer of the Court as the Court may direct to do such act. The High Court may, from time to time, by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

638. The following portions of this Code shall not apply to the High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely, sections 16, 17, and 19, sections 54, clauses (a) and (b), 57, 119, 160, 182 to 185 (both inclusive), 187, 189, 190, 191, 192 (so far as relates to the manner of taking evidence), 198 to 206 (both inclusive), and so much of section 409 as relates to the making of a memorandum; and section 579, shall not apply to the High Court in the exercise of its appellate jurisdiction.

Nothing in this Code shall extend or apply to any Judge of a High Court in the exercise of jurisdiction as an Insolvent Court.

A JUDGMENT-DEBTOR having been arrested in execution of a decree of the High Court in its Original Civil Jurisdiction, and brought before the Court under the provisions of s. 336 of the Code of Civil Procedure, claimed to be discharged on the ground that he intended to apply to the Court to be declared an insolvent either under the provisions of chap. 20 of the Code or of 11 & 12 Vic., c. 21. Held that the judgment-debtor, on expressing his intention to file a petition and schedule under 11 & 12 Vic., c. 21, and complying with the conditions of s. 336 of the Code of Civil Procedure, was entitled to be discharged.—*Ex parte Pinsent*, I. L. R., 8 Mad. 276. [Feb. 6, 1885.]

639. The High Court may, from time to time, frame forms for any proceeding in such Court, and may make rules as to the books, entries, and accounts to be kept by its officers.

PART X.

CHAPTER XLIX.

MISCELLANEOUS.

Extending to
Provincial S.
C. Courts.

640. Women, who, according to the customs and manners of the country, ought not to be compelled to appear in public, shall be exempt from personal appearance in Court.

But nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process.

It is not necessary that a special order of Court should be made empowering an officer authorized to arrest a purda-nashin lady to enter the zanáná of the house in which she resides. Under s. 336 of the Civil Procedure Code, if the officer is able to enter the house, he may break into any room in the house, including the zanáná, in order to effect the arrest.—Kadumbinee Dossee (S. M.) v. Koylash-kaminee Dossee (S. M.), I. L. R., 7 Cal. 19. [Mar. 21, 1881.]

Id.

641. The Local Government may, by notification in the official Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption, and may, by like notification, withdraw such privilege.

The names and residences of the person so exempted shall, from time to time, be forwarded to the High Court by the Local Government, and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

When any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

Id.

642. No Judge, Magistrate, or other judicial officer, shall be liable to arrest under civil process while going to, presiding in, or returning from his Court.

And, except as provided in sections 256 and 643, where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtárs, revenue-agents, and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

The general rule that a party to a suit is protected from arrest upon any civil process while going to the place of trial, while attending there for the purpose of the cause, and while returning home, applies to a defendant to a suit under the summary-procedure sections of Act X. of 1877, who has not obtained leave to appear and defend, and who,

therefore, cannot be heard at the trial. Questions as to the privilege of exemption from arrest, in the case of persons arrested under writs issued from the Small Cause Court in Calcutta, must be governed by the English law, and not by s. 642 of the above Act. It is not a deviation sufficient to forfeit the privilege if the shortest road home is deviated from, and a less crowded and more convenient road adopted.—*In re Soorendro Nath Ray Chowdhry*, I. L. R., 5 Cal 106. [April 9, 1879.]

WHERE a defendant in a suit in the High Court was arrested in execution of a decree of the Calcutta Court of Small Causes, while attending before an arbitrator appointed by the High Court to take a reference in the suit, it was held that he was privileged from such arrest while so attending, and that the High Court had power to direct his release from custody. Small Cause Courts in the presidency-towns are subject to the order and control of the High Court. In the Matter of Omirtolal Dey (I. L. R., 1 C. 178) followed.—In the Matter of Jugessur Roy, 5 C. L. R. 170. [Sep. 23, 1879.]

A REVENUE Court is a "Court of Civil Judicature" within the meaning of s. 651 of the Code of Civil Procedure. A person, therefore, who escapes from custody under the process of a Revenue Court is punishable under that section. S. 642 of the Civil Procedure Code only protects an accused person while he is attending a Criminal Court from arrest "under that Code." *Id.* Therefore, where a person, who had been convicted by a Magistrate, and had been fined, was arrested in execution of the process of a Revenue Court while waiting in Court until the money to pay such fine was brought, that such person was not protected from such arrest by the provisions of that section, and that, having escaped from custody under such arrest, such person had properly been convicted under s. 651 for escaping from "lawful custody."—*Empress v. Harakh Nath Singh*, I. L. R., 4 All. 27. [July 13, 1881.]

WHERE a native of Patna came from Calcutta to Madras on 24th October on account of a suit pending, in which he was plaintiff, and, the case having been adjourned on 27th October for seven weeks, remained in Madras on account of the suit, and was arrested on 10th November, held that he was privileged under s. 642 of the Code of Civil Procedure.—In the Matter of Siva Bux Savantharam, I. L. R., 4 Mad. 317. [Nov. 11, 1881.]

643. When, in a case pending before any Court, there appears to the Court sufficient ground for sending for investigation to the Magistrate a charge of any such offence as is described in section 193, section 196, section 199, section 200, section 205, section 206, section 207, section 208, section 209, section 210, section 463, section 471, section 474, section 475, section 476, or section 477, of the Indian Penal Code, which may be made in the course of any other suit or proceeding, or with respect to any document offered in evidence in the case, the Court may cause the person accused to be detained till the rising of the Court, and may then send him in custody to the Magistrate, or take sufficient bail for his appearance before the Magistrate. Extending to Provincial S. C. Court.

The Court shall send to the Magistrate the evidence and documents relevant to the charge, and may bind over any person to appear and give evidence before such Magistrate.

The Magistrate shall receive such charge, and proceed with it according to law.

WHERE the provisions of s. 258 of the Code of Civil Procedure have not been complied with, a Civil Court is not debarred from admitting evidence that the decree has been satisfied out of Court, for the purpose of an investigation with a view to sending the judgment-debtor to a Magistrate under s. 643 of the Code of Civil Procedure.—*Queen v. Mutturaman Chetti*, I. L. R., 1 Mad. 325. [Dec. 5, 1881.]

644. Subject to the power conferred on the High Court by section 639 and by the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, the forms set forth in the fourth schedule hereto annexed, with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

Ditto.

Extending to
Provincial
C. Court.

645. The language (which, when this Code comes into force, is the language of any Court subordinate to, a High Court, shall continue to be the language of such subordinate Court until the Local Government otherwise orders ;

but it shall be lawful for the Local Government from time to time, to declare what language shall be the language of every such Court.

Ditto.

645A. In any Admiralty or Vice-Admiralty cause of salvage, towage, or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may if it thinks fit; and upon request of either party to such cause shall, summon to its assistance, in such manner as the Court may, by rule, from time to time, direct, two competent assessors ; and such assessors shall attend and assist accordingly.

Every such assessor shall receive such fees for his attendance as the Court by rule prescribes. Such fees shall be paid by such of the parties as the Court in each may direct.

Ditto.

646. Whenever the Registrar of a Court of Small Causes has any doubt upon any question of law or usage having the force of law, or as to the construction of a document, which construction may affect the merits of the decision, he may state a case for the opinion of the Judge ; and all the provisions herein contained relative to the stating of a case by the Judge shall apply, *mutatis mutandis*, to the stating of a case by the Registrar.

Ditto.

647. The procedure herein prescribed shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction other than suits and appeals.

The High Court may, from time to time, make rules to provide for the admission, in such proceedings, of affidavits as evidence of the matters to which such affidavits respectively relate ; and such rules, on being published in the local official Gazette, shall have the force of law.

THE provisions of the Letters Patent of 1865, cl. 36, that when the Judges of a Division Bench are equally divided in opinion, the opinion of the senior Judge shall prevail, has been superseded by Act X. of 1877 (which is extended to miscellaneous proceedings of the nature of appeals by s. 647 of that Act), so far as regards cases to which s. 575 is applicable.—*Appaji Bhivráv v. Shivról Khutbehánd*, I. L. R., 3 Bom. 204 (F. B.). [Mar. 31, 1879.]

AN appeal lies under s. 647 of the Code of Civil Procedure against an order of a District Court under s. 5, Act XX. of 1863.—*Sultán Acketi Sahib v. Shaik Báva Maluiniya*, I. L. R., 4 Mad. 295. [Oct. 3, 1879.]

FAILURE to comply with the provisions of ss. 182 and 183 of Act X. of 1877 (Civil Procedure Code) in a judicial proceeding is an informality which renders the deposition of an accused inadmissible in evidence on a charge of giving false evidence based on such deposition ; and under s. 91 of Act I. of 1872 (Indian Evidence Act), no other evidence of such deposition is admissible.—In the Matter of the Petition of *Mayadeb Gossami* ; *Empress v. Mayadeb Gossami*, I. L. R., 6 Cal. 762. [Feb. 22, 1881.]

THE procedure to be followed upon the sale of an under-tenure is that prescribed by the Civil Procedure Code. S. 311 does not apply only to sales made under chap. 19 of the Code, and the sale of an under-tenure may be set aside upon any of the grounds mentioned in that section.—*Azizoonnessa Khatoon v. Gora Chand Dass*, I. L. R., 7 Cal. 163. [Mar. 18, 1881.]

Ss. 25 and 647 of the Civil Procedure Code (Act X. of 1877) are both applicable to Courts of Small Causes in the Mufassal, and the former section is extended by the latter to execution-proceedings in such Courts. Under s. 25 of the Civil Procedure Code (Act X. of 1877), the District Judge has power to withdraw an application for execution of a decree

from a subordinate Court (such as a Mufassal Court of Small Causes) and to dispose of it himself, or to transfer it to another subordinate Court competent to deal with it. The distinction made for the purposes of limitation between suits, appeals, and applications by the Limitation Acts, has no bearing upon a question of jurisdiction—*Balaji Ranchoddas, Applicant, I. L. R., 5 Bom. 680. [Aug. 30, 1881.]*

WHERE a judgment-debtor, pending the execution-proceedings, was granted permission to examine the state of the accounts, but failed to do so, and then made a fresh application to the Court for the same purpose after the execution-proceedings had been struck off, and the decree declared to be satisfied. *Held* that the question must be determined with reference to the provisions of s. 647 of the Civil Procedure Code, and the only course open to the judgment-debtor would have been to apply for a review of the order which declared the decree to be satisfied and struck off the execution-proceedings.—*Fakaruddin Mahomed Absan v. Official Trustee of Bengal, I. L. R., 10 Cal. 538. [Feb. 21, 1881.]*

THE holder of a decree for money, dated the 7th June 1879, applied, on the 20th July 1880, for execution thereof, but it appeared that in certain particulars the decree required correction, and it was therefore ordered, at the request of the pleader for the decree-holder, that the application should be dismissed, and the decree returned to him for amendment. The next application for execution of the decree was made by the decree-holder on the 19th February 1883. *Held* that the application of the 20th July 1880 having been put in and afterwards taken back by the decree-holder, the proceeding became, to all intents and purposes, as though no application had been made; that therefore it could have no effect as an application made in accordance with law for execution within the meaning of art. 179, sch. 2, of the Limitation Act; that applying the rule contained in s. 374 of the Civil Procedure Code, in accordance with s. 647, to the application for execution of the 19th February 1883, the question of limitation must be determined as if the first application had never been filed; and that the application now in question was consequently barred by limitation. *Ramanandan v. Periatambi (I. L. R., 6 Mad. 250) dissented from. Pirjade v. Pirjade (I. L. R., 6 Mad. 681), referred to.—Kifayat Ali v. Ram Singh, I. E. R., 7 All. 359. [Jan. 24, 1885.]*

S. 647 of the Code of Civil Procedure (Act XIV. of 1882), when read with cl. 8 of s. 588, does not give a right of appeal to a judgment-debtor whose application to set aside a sale of his property has been dismissed under s. 102, and whose application to set the dismissal aside has been refused under s. 103. S. 647 is not intended to confer any rights of appeal not expressly given elsewhere by the Code.—*Ningappa v. Gangawati, I. L. R., 10 Bom. 433. [Nov. 26, 1885.]*

THERE is nothing in the Indian Companies Act (VI. of 1882), or the High Courts Act (24 and 25 Vic., c. 104), or the Letters Patent, which prevents the High Court from calling for the record of the proceedings in the winding up of a company under the Companies Act, and transferring those proceedings to its own file. Such a power is given to the High Court by s. 647 read with s. 23 of the Civil Procedure Code. Where, in the proceedings in the winding up of a company under Act VI. of 1882, an order was passed admitting the proof of a particular creditor of the company before any liquidator had been appointed, *held* that this was an irregularity which by itself would justify the High Court in sending for the record. Where the District Judge conducting the proceedings in the winding up of a company under Act VI. of 1882 had, after receiving notice of the admission by the High Court of a petition for transfer of those proceedings to its own file, drafted and placed upon the record an order which it might have been difficult for him to reconsider if the matter again came before him, and where the case appeared to be one in which serious questions of law were likely to arise which it would probably be difficult to discuss adequately in the District Court, in the absence of the authorities upon the subject and of any rules framed by the High Court for dealing with windings-up under the Act, and the case was of a kind which would probably come before the High Court in a variety of appeals from orders brought by one side, or the other, *held* that, under these circumstances, the case was a proper one for the exercise of the High Court's jurisdiction by calling up the winding-up proceedings to its own file. A person who has been appointed liquidator of a company ought not, after such appointment, to continue to act as *vakil* of a creditor whose right to prove against the company is in dispute in the liquidation.—In the Matter of the West Hopton Tea Company, Limited, I. L. R., 9 All. 180. [Dec. 1, 1886.]

648. Where any Court desires that any person shall be arrested, or Extending to Provincial S. C. Court.
Procedure when person to be arrested or property to be attached is outside district.
 that any property shall be attached, under any provision of this Code not relating to the execution of decrees, and such person resides or property is

situate outside the local limits of its jurisdiction, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment :

and the Court making any arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he furnishes sufficient security for his appearance before that Court, or (where the case is one under Chapter XXXIV.) for satisfying any decree that may be passed against him by such Court, in either of which cases the Court making the arrest shall release him.

ACT X. of 1877, s. 223, does not apply to a Small Causes Court, and s. 648 does not apply to a case in which the defendant resides within the same district in which the Court issuing a warrant is situate. Consequently, a Small Cause Court may issue a warrant for the arrest of a person residing in another district, but not if he resides within the same district in which the Court is situate, but outside its local jurisdiction.—*Chunilal Sobharam v. Purbhudás Kursandás*, I. L. R., 2 Bom. 560. [Mar. 26, 1878.]

A DECREE of a Small Cause Court can be executed by it at any place within the local limits of the District Court to which it is subordinate, as defined by Act X. of 1877, s. 2, without having recourse to the procedure under s. 648, which applies only to cases in which a decree passed in one district has to be executed in another district.—*Badan Bobajee v. Kala Chand Bobajee*, I. L. R., 4 Cal. 828. [Mar. 24, 1879.]

WHERE an officer proceeding from Burmah to England on leave resided a few days in Madras on the way, *held* that such residence was sufficient, for the purpose of s. 648 of the Code of Civil Procedure, to render him liable to arrest before judgment.—*Everet v. Free*, I. L. R., 8 Mad. 205. [Jan. 30, 1885.]

Extending to
Provincial S.
C. Court.

649. The rules contained in Chapter XIX. shall apply to the execution

Rules applicable to all civil process for arrest, sale, or payment.

of any judicial process for the arrest of a person or the sale of property or payment of money, which may be desired or ordered by a Civil Court in any civil proceeding.

In the same chapter, the expression "Court which passed a decree," or words to that effect, shall, unless there is something repugnant in the context, be deemed to include, where the decree to be executed is passed in appeal, the Court which passed the decree against which the appeal was preferred, and, where the Court which passed the decree to be executed has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed were instituted at the time of making application for execution of the decree, would have jurisdiction to try such suit.

ALTHOUGH the High Court, in its appellate side, does not, as a general rule, execute its own decrees or orders, yet this circumstance in no way affects the vitality of its jurisdiction in this respect, and it cannot therefore be included among Courts which have ceased to have jurisdiction to execute decrees as specified under s. 649 of the Code of Civil Procedure.—*Huro Pershad Roy v. Bhupendro Narain Dutt*, I. L. R., 6 Cal. 201. [June 23, 1880.]

Per GARTH, C.J.—S. 649 of the Civil Procedure Code as amended by Act XII. of 1879, which explains the meaning of the expression, the "Court which passed the decree," does not exclude the Court which originally passed the decree as being a Court in which an application for execution should be made, but merely includes another Court. When, therefore, a Court which has passed a decree has ceased to have jurisdiction to execute it,

the application for execution may be made either to that Court, although it has ceased to have jurisdiction to execute the decree, or to the Court which (if the suit wherein the decree was passed, were instituted at the time of making application to execute it) would have jurisdiction to try the suit. *Per* Field, J. — A Court does not cease to be “the Court which passed the decree” merely by reason that the head-quarters of such Court are removed to another place, or merely because the local limits of the jurisdiction of such Court are altered. An application for the transfer of a decree under the provisions of s. 223 and the following section of Act X. of 1877 is a step in aid of the execution of the decree within the meaning of cl. 4, art. 179, sch. 2. of Act XV. of 1877. — *Latchman Pundeh v. Maddan Mohun Shye*, I. L. R., 6 Cal. 513. [Dec. 10, 1880.]

A IN 1839 obtained a decree against B, a *sardār* in the Court of the Agent for Sardars. The decree was executed in the Agent's Court until B's death in 1868. B's status as a *sardār* under exclusive jurisdiction of the Agent did not descend to his sons, and the decree was transferred to the Court of the First-class Subordinate Judge at Ahmednagar for execution. Various objections were taken to the execution of the decree by that Court, but none on the ground that the Agent's decree could not be executed by a mere transfer to an ordinary Civil Court. The case went up twice to the High Court, under whose orders the execution was for several years continued in favour of A's representatives against the estate of B's sons. In 1885 one of A's representatives assigned his interest under the decree to C and D. Thereupon the transferees, C and D, applied to the First-class Subordinate Judge at Ahmednagar to have their names substituted in the place of the transferor in the execution-proceedings. The Subordinate Judge rejected this application, on the ground that he could not recognize the transfer of the decree either under s. 372 or s. 232 of the Civil Procedure Code (Act XIV. of 1882). He also found that execution had been going on for several years contrary to the ruling in *Khusnao v. Sakharam Ramchandrar* (12 Bom. H. R. 212), which laid down that the Agent's decree could not be executed by a mere transfer to an ordinary Court—the remedy in such cases being by a suit on the decree. On this ground, also, he refused to recognize the transfer of the decree. *Held*, reversing the order of the lower Court, that the assignment of the decree-holder's rights to execution in this case was one approved by the law as contained in s. 232 of the Code of Civil Procedure (Act XIV. of 1882). The transferee of a decree gains by the transfer the rights of the transferor. *Held* also that though the execution-proceedings in this case had been for many years irregularly conducted by a mere transfer of the Agent's decree to an ordinary Civil Court, still as the Court which carried on the execution had jurisdiction to grant the same relief if a suit had been brought upon the decree, the irregularity, having been acquiesced in, did not vitiate the former proceedings in execution. Where jurisdiction over the subject-matter exists, requiring only to be invoked in the right way, the party who has invited or allowed the Court to exercise it in a wrong way cannot afterwards challenge the legality of the proceedings due to his own invitation or negligence. But if there is no jurisdiction over the subject-matter, the acquiescence of the parties concerned cannot create it. Where a decree—one of continuous operation, taking effect as each year furnishes proceeds for its satisfaction, it must be executed each year according to the law of procedure then in force.—*Vishnu Sakharam Nagarkar v. Krishnarao Malhar*, I. L. R., 11. Bom. 153. [July 29, 1886.]

650. The provisions of Chapters XIV. and XV., relating to witnesses, Extending to

Application of rules as to shall apply to all persons required to give evidence Provincial S. witnesses. or to produce documents in any proceeding under C. Courts. this Code.

650A. Summonses issued by any Civil or Revenue Court situate be- Ditto.

Service of foreign summonses. yond the limits of British India may be sent to the Courts in British India, and served as if they had been issued by such Courts: Provided that the Courts issuing such summonses have been established by the authority of the Governor-General in Council, or that the Governor-General in Council has, by notification in the *Gazette of India*, declared the provisions of this section to apply to such Courts.

The Governor-General in Council may, by like notification, cancel any notification made under this section, but not so as to invalidate the service of any summons served previous to such cancellation.

Extending to
Provincial S.
C. Courts:

651.* Whoever offers any resistance or illegal obstruction to the lawful apprehension of himself under this Code, or under

Penalty for resisting apprehension or escaping from custody under Code or civil process. "the warrant of any Civil or Revenue Court, or escapes or attempts to escape from any custody in which he is lawfully detained under this Code or under such warrant; shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

A REVENUE Court is a "Court of Civil Judicature" within the meaning of s. 651 of the Code of Civil Procedure. A person, therefore, who escapes from custody under the process of a Revenue Court is punishable under that section. S. 642 of the Civil Procedure Code only protects an accused person while he is attending a Criminal Court from arrest "under that Code." *Held*, therefore, where a person, who had been convicted by a Magistrate, and had been fined, was arrested in execution of the process of a Revenue Court while waiting in Court until the money to pay such fine was brought, that such person was not protected from such arrest by the provisions of that section, and that, having escaped from custody under such arrest, such person had properly been convicted under s. 651 for escaping from "lawful custody."—*Empress v. Harakh Nath Singh*, I. L. R., 4 All. 27. [July 13, 1881.]

THE apprehension of a judgment-debtor in execution of a decree without the officer making the apprehension having the warrant of the Court executing the decree in his possession at the time of making the apprehension is illegal; and, therefore, in such a case the judgment-debtor does not render himself liable to punishment under s. 651 of the Civil Procedure Code, if he escapes from the custody of the officer making the apprehension. *Quere*.—Whether a person convicted under s. 651 of the Civil Procedure Code of escaping from lawful custody, who is sentenced to one month's imprisonment only, can, under s. 588 (29) of that Code, appeal?—*Empress v. Amar Nath*, I. L. R., 5 All. 318. [Feb. 1, 1883.]

Ditto.

652. The High Court may, from time to time, make rules consistent

Power to make subsidiary rules of procedure. "with this Code to regulate any matter connected with its own procedure or the procedure of the Courts of Civil Judicature subject to its superintendence. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

* This section has been repealed by Act X. of 1886, s. 24, and the same provision has been inserted in the Penal Code as s. 225B.

THE FIRST SCHEDULE.

(See section 3.)

ACTS REPEALED.

Number and year.	Subject or title.	Extent of repeal.
X. of 1877 ...	The Code of Civil Procedure ...	So much as has no been repealed.
XII. of 1879 ...	Amending Act X. of 1877, &c. ...	Sections one to one hundred and three (both inclusive).
VII. of 1880 ...	Merchant Shipping ...	Section eighty-five.

THE SECOND SCHEDULE.

(See section 5.)

*Chapter and Sections of this Code extending to Provincial
Courts of Small Causes.*

PRELIMINARY : Sections 1, 2, 3, and 5.

CHAPTER I.—Of the Jurisdiction of the Courts and *Res Judicata*, except section 11.

CHAPTER II.—Of the Place of Suing, except section 20, paragraph 4, and sections 22 to 24 (both inclusive).

CHAPTER III.—Of Parties and their Appearances, Applications, and Acts.

CHAPTER IV.—Of the Frame of the Suit, except section 42 and section 44, rule *a*.

CHAPTER V.—Of the Institution of Suits.

CHAPTER VI.—Of the Issue and Service of Summons, except section 77.

CHAPTER VII.—Of the Appearance of the Parties and Consequence of Non-appearance.

CHAPTER VIII.—Of Written Statements and Set-off.*

CHAPTER IX.—Of the Examination of the Parties by the Court, except section 119.

CHAPTER X.—Of Discovery and the Admission, &c., of Documents.

CHAPTER XII.—Section 155, first paragraph, Judgment where either party fails to produce his evidence.

CHAPTER XIII.—Of Adjournments.

CHAPTER XIV.—Of the Summoning and Attendance of Witnesses.

CHAPTER XV.—Of the Hearing of the Suit and Examination of Witnesses, except sections 182 to 188 (both inclusive)

CHAPTER XVI.—Of Affidavits.†

CHAPTER XVII.—Of Judgment and Decree, except sections 204, 207, 211, 212, 213, 214, and 215.

CHAPTER XVIII.—Sections 220, 221, and 222, Of Costs.

* The words, "Of Written Statements and Set-off," have been substituted by the Provincial Small Cause Courts Act (IX. of 1887) for the words "Section 111, Set-off," originally enacted.—See Act IX. of 1887, s. 26.

† This line has been added by Act IX. of 1887, s. 26.

CHAPTER	XXIX.—Of the Execution of Decrees, sections 223 to 236 (both inclusive), 239 to 258 (both inclusive), 259 (except so far as relates to the recovery of wages), 266 (except so far as relates to immoveable property), 267 to 272 (both inclusive), 272 (so far as relates to decrees for moveable property), "275 to 283."* 284 (so far as relates to moveable property), 285, 286, 287, 288, 289, 290, 291, 292, 293 (so far as relates to re-sales under 297), 294 to 303 (both inclusive), 328 to 333 (both inclusive, so far as relates to moveable property), 336 to 343 (both inclusive).
CHAPTER	XX.—Section 360, Power to invest certain Courts with Insolvency-jurisdiction.
CHAPTER	XXI.—Of the Death, Marriage, and Insolvency of Parties.
CHAPTER	XXII.—Of the Withdrawal and Adjustment of Suits.
CHAPTER	XXIII.—Of Payment into Court.
CHAPTER	XXIV.—Of requiring Security for Costs.
CHAPTER	XXV.—Of Commissions.
CHAPTER	XXVI.—Suits by Paupers.
CHAPTER	XXVII.—Suits by and against Government or Government Servants.
CHAPTER	XXVIII.—Suits by Aliens and by and against Foreign and Native Rulers, except the first paragraph of section 433.
CHAPTER	XXIX.—Suits by and against Corporations and Companies.
CHAPTER	XXX.—Suits by and against Trustees, Executors, and Administrators.
CHAPTER	XXXI.—Suits by and against Minors and Persons of Unsound Mind.
CHAPTER	XXXII.—Suits by and against Military Men.
CHAPTER	XXXIII.—Interpleader.
CHAPTER	XXXIV.—Of Arrest and Attachment before Judgment, except as regards immoveable property.
CHAPTER	XXXV.—Appointment of Receivers.
CHAPTER	XXXVII.—Reference to Arbitration, section 506 to 526 (both inclusive).
CHAPTER	XXXVIII.—Of Proceedings on Agreement of Parties.
CHAPTER	XLVI.—Reference to and Revision by High Court.
CHAPTER	XLVIII.—Of Review of Judgment, sections 623, 626, and 630.†
CHAPTER	XLIX.—Miscellaneous.‡

THE THIRD SCHEDULE.

(See section 7.)

Bombay Enactments.

Bombay Regulation XXIX.,	1827.
" "	VII., 1830.
" "	I., 1831.
" "	XVI., 1831.
Act XIX. of	1835.
" XIII. of	1842.

* The word and figures quoted have been substituted by the Provincial Small Cause Courts Act (IX. of 1887) for the figures and words "275 to 280 (both inclusive), 283." See Act IX. of 1887, s. 26.

† This line has been substituted by Act IX. of 1887, s. 26, for the line—"Chapter XLVII.—Of Review of Judgment."

‡ The item "Chapter XLIX.—Miscellaneous" has been substituted by Act IX. of 1887, s. 26, for the item "Chapter XLIX.—Miscellaneous, sections 640 to 647 (both inclusive), sections 69 to 652 (both inclusive)"

THE FOURTH SCHEDULE.

(See section 844.)

FORMS OF PLEADINGS AND DECREES.

A.—PLAINTS. PART I.

No. 1.

FOR MONEY LENT.

IN THE COURT OF

Civil Suit No.

A. B., of

against

C. D., of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , he lent the defendant rupees, repayable on demand [or on the day of].
2. That the defendant has not paid the same, except rupees, paid on the day of 18 .
- [If the plaintiff claims exemption from any law of limitation say :—
3. The plaintiff was a minor [or insane] from the day of till the day of].
4. The plaintiff prays judgment for rupees, with interest at per cent. from the day of 18 .

[NOTE.—The object of stating when the debt is to be repaid is merely to fix a date for interest. If, therefore, interest is not claimed, the statement may be omitted.]

No. 2.

FOR MONEY RECEIVED TO PLAINTIFF'S USE.

(Title.)

A. B. and G. H., the above-named plaintiffs, state as follows :—

1. That on the day of 18 , at , the defendant received rupees [or a cheque on the Bank for rupees] from one E. F. for the use of the plaintiffs.
2. That the defendant has not paid [or delivered] the same accordingly.
3. The plaintiffs pray judgment for rupees, with interest at per cent. from the day of 18 .

No. 3.

FOR PRICE OF GOODS SOLD BY A FACTOR.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , he and E. K. since deceased, delivered to the defendant [one thousand barrels of flour, five hundred maunds of rice, or as the case may be] for sale upon commission.
2. That on the day of 18 , [or on some day unknown to the plaintiff, before the day of 18], the defendant sold the said merchandise for rupees.
3. That the commission and expenses of the defendant thereon amount to rupees.
4. That on the day of 18 , the plaintiff demanded from the defendant the proceeds of the said merchandise.
5. That he has not paid the same.

[Demand of judgment.]

No. 4.

FOR MONEY RECEIVED BY DEFENDANT THROUGH THE PLAINTIFF'S MISTAKE
OF FACT.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff agreed to buy and the defendant agreed to sell bars of silver at annas per tola of fine silver.
2. That the plaintiff procured the said bars, to be assayed by one *E. F.*, who was paid by the defendant for such assay, and that the said *E. F.* declared each of the said bars to contain 1,500 tolas of fine silver, and that the plaintiff accordingly paid the defendant rupees annas therefor.
3. That each of the said bars did contain only 1,200 tolas of fine silver.
4. That the defendant has not repaid the sum so overpaid.

[Demand of judgment.]

[NOTE.—A demand of repayment is not necessary, but it may affect the question of interest or the costs.]

No. 5.

FOR MONEY PAID TO A THIRD PARTY AT THE DEFENDANT'S REQUEST.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , at the request [or by the authority] of the defendant, the plaintiff paid to one *E. F.* rupees.
2. That, in consideration thereof, the defendant promised [or became bound] to pay the same to the plaintiff, on demand [or as the case may be].
3. That [on the day of 18 , the plaintiff demanded payment of the same from the defendant, but] he has not paid the same.

[Demand of judgment.]

[NOTE.—If the request or authority is implied, the plaint should state facts raising the implication.]

No. 6.

FOR GOODS SOLD AT A FIXED PRICE AND DELIVERED.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , *E. F.* of , deceased, sold and delivered to the defendant [one hundred barrels of flour, or the goods mentioned in the schedule hereto annexed, or sundry goods].
2. That the defendant promised to pay rupees for the said goods on delivery [or on the day of some day before the plaint was filed].
3. That he has not paid the same.
4. That the said *E. F.* in his lifetime made his will, whereby he appointed the plaintiff executor thereof.
5. That on the day of 18 , the said *E. F.* died.
6. That on the day of probate of the said will was granted to the plaintiff by the Court of .
7. The plaintiff as executor as aforesaid [Demand of judgment].

[NOTE.—If a day was fixed for payment, it should be stated as furnishing a date for the commencement of interest.]

No. 7.

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED.

(Title.)

1. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , plaintiff sold and delivered to the defendant [*sundry articles of house-furniture*], but no express agreement was made as to the price.

2. That the same were reasonably worth rupees.

3. That the defendant has not paid the same.

[Demand of judgment.]

[NOTE.—The law implies a promise to pay so much as the goods are reasonably worth.]

No. 8.

FOR GOODS DELIVERED TO A THIRD PARTY AT DEFENDANT'S REQUEST AT A FIXED PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , plaintiff sold to the defendant [*one hundred barrels of flour*], and, at the request of the defendant, delivered the same to one E. F.

2. That the defendant promised to pay to the plaintiff rupees therefor.

3. That he has not paid the same.

[Demand of judgment.]

No. 9.

FOR NECESSARIES FURNISHED TO THE FAMILY OF DEFENDANT'S TESTATOR WITHOUT HIS EXPRESS REQUEST, AT A REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , plaintiff furnished to [*Mary Jones*], the wife of [*James Jones*], deceased, at her request, sundry articles of [*food and clothing*], but no express agreement was made as to the price.

2. That the same were necessary for her.

3. That the same were reasonably worth rupees.

4. That the said *James Jones* refused to pay the same.

5. That the defendant is the executor of the last will of the said *James Jones*.

[Demand of judgment.]

No. 10.

FOR GOODS SOLD AT A FIXED PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , the plaintiff sold to E. F., of , deceased [*all the crops then growing on his farm in*].

2. That the said E. F. promised to pay the plaintiff rupees for the same.

3. That he did not pay the same.

4. That the defendant is administrator of the estate of the said E. F.

[Demand of judgment.]

THE FOURTH SCHEDULE.

No. 11.

FOR GOODS SOLD AT A REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , E. F., of , sold to the defendant [all the fruit growing in his orchard in], but no express agreement was made as to the price.
2. That the same was reasonably worth rupees.
3. That the defendant has not paid the same.
4. That on the day of the High Court of Judicature at Fort William duly adjudged the said E. F. to be a lunatic, and appointed the plaintiff committee of his estate, with the usual powers for the management thereof.
5. The plaintiff as committee as aforesaid [*Demand of judgment*].

[NOTE.—When the lunatic's estate is not subject to the ordinary original jurisdiction of a High Court, for paragraphs 4 and 5 substitute the following:—]

4. That on the day of the Civil Court of duly adjudged the said E. F. to be of unsound mind and incapable of managing his affairs, and appointed the plaintiff manager of his estate.
5. The plaintiff as manager as aforesaid [*Demand of judgment*].

No. 12.

FOR GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , E. F., of , agreed with the plaintiff that the plaintiff should make for him [*sic tables and fifty chairs*], and that the said E. F. should pay for the same upon delivery thereof rupees.
2. That the plaintiff made the said goods, and on the day of 18 , offered to deliver the same to the said E. F., and has ever since been ready and willing so to do.
3. That the said E. F. has not accepted the said goods or paid for the same.
4. That on the day of 18 , the High Court of Judicature at Fort William duly adjudged the said E. F. to be a lunatic, and appointed the defendant committee of his estate.
5. The plaintiff prays judgment for rupees with interest from the day of at the rate of per cent. per annum, to be paid out of the estate of the said E. F. in the hands of the defendant.

No. 13.

FOR DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION].

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , plaintiff put up at auction sundry [*articles of merchandise*], subject to the condition that all goods not paid for and removed by the purchaser thereof within [*ten days*] after the sale should be re-sold by auction, on his account, of which condition the defendant had notice.
2. That the defendant purchased [*one crate of crockery*] at the said auction at the price of rupees.
3. That the plaintiff was ready and willing to deliver the same to the defendant on the said day and for [*ten days*] thereafter, of which the defendant had notice.
4. That the defendant did not take away the said goods purchased by him, nor pay therefor, within [*ten days*] after the sale, nor afterwards.
5. That on the day of 18 , at , the plaintiff re-sold the said [*crate of crockery*], on account of the defendant, by public auction, for rupees.

6. That the expenses attendant upon such re-sale amounted to rupees.
7. That the defendant has not paid the deficiency thus arising, amounting to rupees.

[Demand of judgment.]

[NOTE to § 4.—Unless the seller agreed to deliver, the purchaser must fetch the goods. See Act IX. of 1872, sec. 93.]

No. 14.

FOR THE PURCHASE-MONEY OF LANDS CONVEYED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff sold [and conveyed] to the defendant [the house and compound, No. , in the city of , or a farm known as , in , or a piece of land lying, &c.].
2. That the defendant promised to pay the plaintiff rupees for the said [house and compound, or farm, or land].
3. That he has not paid the same.

[Demand of judgment.]

[NOTE.—Where there has been no actual conveyance, say in § 1, “sold to the defendant the house, &c., and placed him in possession of the same.”]

No. 15.

FOR THE PURCHASE-MONEY OF IMMOVEABLE PROPERTY CONTRACTED TO BE SOLD, BUT NOT CONVEYED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff [the house, No. , in the town of , or one hundred bigas of land in , bounded by the East Indian railroad, and by the other lands of the plaintiff] for rupees.
2. That on the day of 18 , at , the plaintiff tendered [or was ready and willing, and offered to execute] a sufficient instrument of conveyance of the said property to the defendant, on payment of the said sum, and still is ready and willing to execute the same.
3. That the defendant has not paid the said sum.

[Demand of judgment.]

No. 16.

FOR SERVICES AT A FIXED PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant [hired plaintiff as a clerk, at the salary of rupees per year].
2. That from the [said day] until the day of 18 , the plaintiff served the defendant as his [clerk].
3. That the defendant has not paid the said salary.

[Demand of judgment.]

No. 17.

FOR SERVICES AT A REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That between the day of 18 , and the day of 18 , at , plaintiff [executed sundry drawings, designs, and diagrams] for the

defendant, at his request ; but no express agreement was made as to the sum to be paid for such services.

2. That the said services were reasonably worth rupees.
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 18.

FOR SERVICES AND MATERIALS AT A FIXED PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff [furnished the paper for and printed one thousand copies of a book called] for the defendant, at his request [and delivered the same to him].
2. That the defendant promised to pay rupees therefor.
3. That he has not paid the same.

[Demand of judgment.],

No. 19.

FOR SERVICES AND MATERIALS AT A REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff a house [known as No. , in], and furnished the materials therefor, for the defendant, at his request, but no express agreement was made as to the price to be paid for such work and materials.
2. That the said work and materials were reasonably worth rupees.
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 20.

FOR RENT RESERVED IN A LEASE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant entered into a contract with the plaintiff, under their hands, a copy of which is hereto annexed.
[Or state the substance of the contract.]
2. That the defendant has not paid the rent of the [month] ending on the day of 18 , amounting to rupees.

[Demand of judgment.]

Another Form.

1. That the plaintiff let to the defendant a house, No. 27, Chowringhee, for seven years, to hold from the day of 18 , at , rupees a year, payable quarterly.

2. That of such rent , quarters are due and unpaid.

[Demand of judgment.]

No. 21.

FOR USE AND OCCUPATION AT A FIXED RENT.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant hired from the plaintiff [the house No. , Street], at the rent of rupees, payable on the first days of .

2. That the defendant occupied the said premises from the 18 day of 18 to the day of 18
3. That the defendant has not paid rupees, being the part of said rent due on the first of 18
- [Demand of judgment.]

No. 22.

FOR USE AND OCCUPATION AT A REASONABLE RENT.

(Title.)

A. B., the above-named plaintiff, executor of the will of X. Y., deceased, states as follows :—

1. That the defendant occupied [the house, No. Street] by permission of the said X. Y., from the day of 18, until the day of 18, and no agreement was made as to payment for the use of the said premises.
2. That the use of the said premises for the said period was reasonably worth rupees.
3. That the defendant has not paid the same.
4. The plaintiff as such executor as aforesaid prays judgment for rupees.

No. 23.

FOR BOARD AND LODGING.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That from the day of 18, until the day of 18, the defendant occupied certain rooms in the house [No. Street], by permission of the plaintiff, and was furnished by the plaintiff, at his request, with meat, drink, attendance, and other necessities.
2. That, in consideration thereof, the defendant promised to pay [or that no agreement was made as to payment for such meat, drink, attendance, or necessities, but the same were reasonably worth] the sum of rupees.
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 24.

FOR FREIGHT OF GOODS.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , plaintiff transported in [his barge, or otherwise] [one thousand barrels of flour or sundry goods from to , at the request of the defendant.
2. That the defendant promised to pay the plaintiff the sum of [one rupee per barrel] as freight thereon [or that no agreement was made as to payment for such transportation, but such transportation was reasonably worth rupees].
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 25.

FOR PASSAGE-MONEY.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, plaintiff conveyed the defendant [in his ship, called the] from to at his request.

THE FOURTH SCHEDULE.

2. That the defendant promised to pay the plaintiff rupees therefor.
 [Or that no agreement was made as to the price of the said passage, but the said passage was reasonably worth rupees.]

3. That the defendant has not paid the same.

[Demand of judgment.]

No. 26.

ON AN AWARD.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , the plaintiff and defendant having a controversy between them concerning [a demand of the plaintiff for the price of ten barrels of oil, which the defendant refused to pay], agreed to submit the same to the award of E. F. and G. H., arbitrators [or entered into an agreement, a copy of which is hereto annexed.]

2. That on the day of 18, at , the said arbitrators awarded that the defendant should [pay the plaintiff rupees].

3. That the defendant has not paid the same.

[Demand of judgment.]

[NOTE.—This will apply where the agreement to refer is not filed in Court.]

No. 27.

ON A FOREIGN JUDGMENT.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , in the State [or Kingdom] of , the Cour. of the State [or Kingdom], in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff rupees, with interest from the said date.

2. That the defendant has not paid the same.

. [Demand of judgment.]

PLAINTS UPON INSTRUMENTS FOR THE PAYMENT OF MONEY ONLY.

No. 28.

ON AN ANNUITY BOND.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , the defendant by his bond became bound to the plaintiff in the sum of rupees to be paid by the defendant to the plaintiff, subject to a condition that, if the defendant should pay to the plaintiff rupees half-yearly on the day of and the day of in every year during the life of the plaintiff, the said bond should be void.

2. That afterwards, on the day of 18, the sum of rupees for of the said half-yearly payments of the said annuity became due to the plaintiff, and is still unpaid.

[Demand of judgment.]

No. 29.

PAYEE AGAINST MAKER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , the defendant, by his promissory note, now overdue, promised to pay to the plaintiff rupees [days] after date;

2. That he has not paid the same [except rupees, paid on the day of 18].

[Demand of judgment.]

[NOTE.—Where the note is payable after notice, for paragraphs 1 and 2 substitute :—]

1. That on the day of 18, at , the defendant, by his promissory note, promised to pay to the plaintiff, rupees months after notice.

2. That notice was afterwards given by the plaintiff to the defendant to pay the same months after the said notice.

3. That the said time for payment has elapsed, but the defendant has not paid the same.

[Where the note is payable at a particular place, say—]

1. That on the day of 18, at , the defendant, by his promissory note, now overdue, promised to pay to the plaintiff [at Messrs. A. and Co.'s, Madras] rupees months after date.

2. That the said note was duly presented for payment [at Messrs. A. and Co.'s] aforesaid, but has not been paid.

Written Statement of the Defendant.

In the Court, &c.

C. D., the above-named defendant, states as follows :—

1. The defendant made the note sued upon under the following circumstances : The plaintiff and defendant had for some years been in partnership as indigo manufacturers, and it had been agreed between them that they should dissolve partnership, that the plaintiff should retire from the business, and that the defendant should take over the whole of the partnership-assets and liabilities, and should pay the plaintiff the value of his share in the assets after deducting the liabilities.

2. The plaintiff thereupon undertook to examine the partnership-books, and inquire into the state of the partnership-assets and liabilities ; and he did accordingly examine the said books and make the said inquiries, and he thereupon represented to the defendant that the assets of the firm exceeded Rs. 1,00,000, and that the liabilities of the firm were less than Rs. 30,000, whereas the fact was that the assets of the firm were less than Rs. 50,000, and the liabilities of the firm largely exceeded the assets.

3. The misrepresentations mentioned in the second paragraph of this statement induced the defendant to make the note now sued on, and there never was any other consideration for the making of such note.

No. 30.

FIRST INDORSEE AGAINST MAKER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , the defendant, by his promissory note, now overdue, promised to pay to the order of E. F. [or to E. F. or order] rupees [days after date].

2. That the said E. F. indorsed the same to the plaintiff.

3. That the defendant has not paid the same.

[Demand of judgment.]

No. 31.

SUBSEQUENT INDORSEE AGAINST MAKER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. [As in the last preceding form.]

2. That the same was, by the indorsement of the said E. F. and of G. H. and J. I. [or and others] transferred to the plaintiff.

3. That the defendant has not paid the same.

[Demand of judgment.]

THE FOURTH SCHEDULE.

No. 32.

FIRST INDORSEE AGAINST FIRST INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That *E. F.*, on the day of 18, at , by his promissory note, now overdue, promised to pay to the defendant or order rupees months after date.
2. That the defendant indorsed the same to the plaintiff.
3. That on the day of 18, the same was duly presented for payment, but was not paid.

[Or state facts excusing want of presentment.]

4. That the defendant had notice thereof.
5. That he has not paid the same.

[Demand of judgment.]

No. 33.

SUBSEQUENT INDORSEE AGAINST FIRST INDORSER ; THE INDORSEMENT BEING SPECIAL.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to one *E. F.* a promissory note, now overdue, made *[or purporting to have been made]* by one *G. H.*, on the day of 18, at , to the order of the defendant, for the sum of rupees *[payable days after date]*.
2. That the same was, by the indorsement of the said *E. F.* *[and others]*, transferred to the plaintiff. *[Or that the said E. F. indorsed the same to the plaintiff.]*

- 3, 4, and 5. *[Same as 3, 4, and 5 of the last preceding form.]*

[Demand of judgment.]

No. 34.

SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to him a promissory note, now overdue, made *[or purporting to have been made]* by one *E. F.*, on the day of 18, at , to the order of one *G. H.*, for the sum of rupees *[payable days after date]*, and indorsed by the said *G. H.* to the defendant.

- 2, 3, and 4. *[Same as in 3, 4, and 5 in Form No. 33.]*

[Demand of judgment.]

No. 35.

SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That a promissory note, now overdue, made *[or purporting to have been made]* by one *E. F.*, on the day of 18, at , to the order of one *G. H.*, for the sum of rupees *[payable days after date]*, and indorsed by the said *G. H.*, to the defendant, was, by the indorsement of the defendant *[and others]*, transferred to the plaintiff.

- 2, 3, and 4. *[As in No. 33]*

[Demand of judgment.]

No. 36.

SUBSEQUENT INDORSEER AGAINST MAKER, AND FIRST AND SECOND INDORSEER.
IN THE COURT OF AT

Civil Suit No.

A. B., of
against
C. D., of
E. F., of
and
G. H., of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at , the defendant, C. D., his promissory note, now overdue, promised to pay to the order of the defendant, E. F., rupees [months after date].
2. That the said E. F. indorsed the same to the defendant, G. H., who indorsed it to the plaintiff.
3. That on the day of 18, the same was presented [or *state facts excusing want of presentment*] to the said C. D. for payment, but was not paid.
4. That the said E. F. and G. H. had notice thereof.
5. That they have not paid the same.

[Demand of judgment.]

No. 37.

DRAWER AGAINST ACCEPTOR.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at , by his bill of exchange, now overdue, the plaintiff required the defendant to pay him rupees [days after date, or sight, thereof].
2. That the defendant accepted the said bill. [If the bill is payable at a certain time after sight, the date of acceptance should be stated; otherwise it is not necessary.]
3. That he has not paid the same.
4. That by reason thereof the plaintiff incurred expenses in and about the presenting and noting of the bill, and incidental to the dishonour thereof.

[Demand of judgment.]

[NOTE.—Where the bill is payable to a third party, for paragraphs 1, 2, 3, say—]

1. That on, &c., at, &c., by his bill of exchange, now overdue, directed to the defendant, the plaintiff required the defendant to pay to E. F. or order rupees months after date.
2. That the plaintiff delivered the said bill to the said E. F. on
3. That the defendant accepted the said bill, but did not pay the same, whereupon the same was returned to the plaintiff.

No. 38.

PAYEE AGAINST ACCEPTOR.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, the defendant accepted the bill of exchange, now overdue, made [or purporting to have been made] by one E. F., on the day of 18, at , requiring the defendant to pay to the plaintiff rupees after sight thereof.
2. That he has not paid the same.

[Demand of judgment.]

THE FOURTH SCHEDULE.

No. 39.

FIRST INDORSEE AGAINST ACCEPTOR.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendant accepted a bill of exchange, now overdue, made [or purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring the defendant to pay to the order of one *G. H.* rupees after sight thereof.
2. That the said *G. H.* indorsed the same to the plaintiff.
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 40.

SUBSEQUENT INDORSEE AGAINST ACCEPTOR.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. [As in the last preceding form, to the end of the article 1.]
2. That by the endorsement of the said *G. H.* [and others], the same was transferred to the plaintiff.
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 41.

PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, by his bill of exchange, directed to *E. F.*, required the said *E. F.* to pay to the plaintiff rupees [days after sight].
2. That on the day of 18 , the same was duly presented to the said *E. F.* for acceptance, and was dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[Demand of judgment.]

No. 42.

FIRST INDORSEE AGAINST FIRST INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to the plaintiff a bill of exchange, now overdue, made [or purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring one *G. H.* to pay to the order of the defendant rupees [days] after sight [or after date, or at sight] thereof [and accepted by the said *G. H.* on the day of 18].
2. That on the day of 18 , the same was presented to the said *G. H.* for payment, and was dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[Demand of judgment.]

No. 43.

SUBSEQUENT INDORSEE AGAINST FIRST INDORSER; THE INDORSEMENT BEING SPECIAL.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to one *E. F.* a bill of exchange, now overdue, made [or purporting to have been made] by one *G. H.*, on the day of 18 ,

at rupees , requiring one *I. J.* to pay to the order of the defendant days after sight thereof [or otherwise], and accepted by the said *I. J.* on the day of 18 . [This clause may be omitted, if not according to the fact.]

2. That the same was, by the indorsement of the said *E. F.* [and others], transferred to the plaintiff.

3. That, on the day of 18 the same was presented to the said *I. J.* for payment, and was dishonoured.

4. That the defendant had due notice thereof.

5. That he had not paid the same.

[Demand of judgment.]

No. 44.

SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to plaintiff a bill of exchange, now overdue, made [or purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring one *G. H.* to the order of *I. J.* rupees days after sight thereof [or otherwise], [accepted by the said *G. H.*], and indorsed by the said *I. J.* to the defendant.

2. That on the day of 18 , the same was presented to the said *G. H.* for payment, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[Demand of judgment.]

No. 45.

SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That a bill of exchange, now overdue, made [or purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring one *G. H.* to pay to the order of one *I. J.* rupees days after sight thereof [or otherwise], [accepted by the said *G. H.*], and indorsed by the said *I. J.* to the defendant, was, by the indorsement of the defendant [and others], transferred to the plaintiff.

2. That on the day of 18 , the same was presented to the said *G. H.* for payment, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[Demand of judgment.]

No. 46.

INDORSEE AGAINST DRAWER, ACCEPTOR, AND INDORSER.

IN THE COURT OF , AT

Civil Suit No.

A. B., of ,

against

C. D., of

E. F., of

and

G. H., of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant *C. D.*, by his bill of exchange, now overdue, directed to the defendant *E. F.*, required the said

E. F. to pay to the order of the defendant *G. H.* rupees [days after sight thereof].

2. That on the day of 18 , the said *E. F.* accepted the same.
3. That the said *G. H.* indorsed the same to the plaintiff.
4. That on the day of 18 , the same was presented to the said *E. F.* for payment, and was dishonoured.
5. That the other defendants had due notice thereof.
6. That they have not paid the same.

[Demand of judgment.]

No. 47.

PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE OF A FOREIGN BILL.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, by his bill of exchange, drawn in Calcutta, required one *E. F.* to pay to the plaintiff in [London] pounds sterling [sixty days] after sight thereof.
 2. That on the day of 18 , the same was presented to the said *E. F.* for acceptance, and was dishonoured, and was thereupon duly protested.
 3. That the defendant had due notice thereof.
 4. That he has not paid the same.
 - [5. That the value of pounds sterling, at the time of the service of notice of protest on the defendant, was rupees annas.]
- Wherefore the plaintiff demands judgment against the defendant for rupees, with [ten per centum] compensation and interest from the day for 18 .

No. 48.

PAYEE AGAINST ACCEPTOR.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , one *E. F.*, by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the plaintiff rupees after date [or days after sight] thereof.
2. That on the day of 18 , the defendant accepted the said bill.
3. That he has not paid the same.

[Demand of judgment.]

No. 49.

ON A MARINE [OPEN] POLICY ON VESSEL LOST BY PERILS OF THE SEA, &c.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. The plaintiff was the owner of [or had an interest in] the ship at the time of her loss, as hereinafter mentioned.
2. That on the day of 18 , at , the defendants, in consideration of rupees to them paid [or which the plaintiff then promised to pay], executed to him a policy of insurance upon the said ship, a copy of which is hereto annexed; [or whereby they promised to pay to the plaintiff, within days after proof of loss and interest, all loss and damage accruing to him by reason of the destruction or injury of the said ship, during her next voyage from to , whether by perils of the sea or by fire, or by other causes therein mentioned, not exceeding rupees].
3. That the said ship, while proceeding on the voyage mentioned in the said policy, was, on the day of 18 , totally lost by the perils of the sea [or otherwise].
4. That the plaintiff's loss thereby was rupees.

5. That on the day of 18 , he furnished the defendants with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendants have not paid the said loss.

[Demand of judgment.]

No. 50.

ON CARBO, LOST BY FIRE :—VALUED POLICY.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff was the owner of [or had an interest in] [one hundred] bales of cotton on board the ship at the time of her loss as hereinafter mentioned.

2. That on the day of 18 , at , the defendants, in consideration of rupees which the plaintiff then paid [or promised to pay], executed to him a policy of insurance upon the said goods, a copy of which is hereto annexed ; [or whereby they promised to pay to the plaintiff rupees in case of the total loss, by fire or other causes mentioned, of the said goods before their landing at ; or, in case of partial loss, such damage as the plaintiff might sustain thereby, provided the same should not exceed per centum of the whole value of the goods].

3. That on the day of 18 , at , while proceeding on the voyage mentioned in the said policy, the said goods were totally destroyed by fire (or as the case may be).

4, 5, and 6. [As in paragraphs 4, 5, and 6 of the last preceding form.]

[Demand of judgment.]

No. 51.

ON FREIGHT :—VALUED POLICY.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff had an interest in the freight to be earned by the ship on her voyage from to , at the time of her loss, as hereinafter mentioned, and that a large quantity of goods was shipped upon freight in her at that time.

2. That on the day of 18 , at , the defendant, in consideration of rupees to him paid, executed to the plaintiff a policy of insurance upon the said freight, a copy of which is hereto annexed [or state its tenor, as before].

3. That the said ship, while proceeding upon the voyage mentioned in the said policy, was, on the day of 18 , totally lost by [the perils of the sea].

4. That the plaintiff has not received any freight from the said ship nor did she earn any on the said voyage, by reason of her loss as aforesaid.

5 and 6. [As in Form No. 49.]

[Demand of judgment.]

No. 52.

FOR A LOSS BY GENERAL AVERAGE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff was the owner of [or had an interest in] [one hundred bales of cotton] shipped on board a vessel called the *Y. Z.*, from to , at the time of the loss hereafter mentioned.

2. That on the day of 18 , at , in consideration of rupees [which the plaintiff then promised to pay], the defendant executed to the plaintiff a policy of insurance upon his said goods, a copy of which is hereto annexed [or state its tenor, as before].

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3. That on the day of 18 , while proceeding on the voyage mentioned in the said policy, the said vessel was so endangered by perils of the sea, that the master and crew thereof were compelled to, and did, cast into the sea a large part of her rigging and furniture.

4. That the plaintiff was, by reason thereof, compelled to, and did, pay a general average loss of rupees.

5. That on the day of 18 , he furnished the defendant with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendant has not paid the said loss.

[Demand of judgment.]

No. 53.

FOR A PARTICULAR AVERAGE LOSS.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1 and 2. [As in the last preceding form.]

3. That on the day of 18 , while on the high seas, the sea-water broke into the said ship, and damaged the said [cotton] to the amount of rupees.

4 and 5. [As in paragraphs 5 and 6 of the last preceding form.]

[Demand of judgment.]

No. 54.

ON A FIRE INSURANCE POLICY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff [was the owner of, or] had an interest in a [dwelling-house known as No. , Street, in the city of], at the time of its destruction [or injury] by fire as hereinafter mentioned.

2. That on the day of 18 , at , in consideration of rupees [to them paid], the defendants executed to the plaintiff a policy of insurance on the said [premises], a copy of which is hereto annexed [or state its tenor]:

3. That on the day of 18 , the said [dwelling-house] was totally destroyed [or greatly damaged] by fire.

4. That the plaintiff's loss thereby was rupees.

5. That on the day of 18 , he furnished the defendants with proof of his said loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendants have not paid the said loss.

[Demand of judgment.]

No. 55.

AGAINST SURETY FOR PAYMENT OF RENT.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , one *E. F.* hired from the plaintiff, for the term of years, the [house No. , Street], at the annual rent of rupees, payable [monthly].

2. That [at the same time and place] the defendant agreed, in consideration of the letting of the said premises to the said *E. F.*, to guarantee the punctual payment of the said rent.

3. That the rent aforesaid for the month of 18 , amounting to rupees, has not been paid.

[If, by the terms of the agreement, notice is required to be given to the surety, add:—]

4. That on the day of 18 , the plaintiff gave notice to the defendant of the non-payment of the said rent, and demanded payment thereof.
5. That he has not paid the same.

[Demand of judgment.]

B.—PLAINTS FOR COMPENSATION FOR BREACH OF CONTRACT.

No. 56.

FOR BREACH OF AGREEMENT TO CONVEY LAND.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed.
[Or, That on, &c., the defendant agreed with the plaintiff that, in consideration of a deposit of rupees then paid, and of the further sum of [ten thousand] rupees payable as hereinafter mentioned, he would, on the day of 18 , at , execute to the plaintiff a sufficient conveyance of [the house No. Street, in the city of , free from all incumbrances; and the plaintiff agreed to pay [ten thousand] rupees for the same on delivery thereof.]
2. That on the day of 18 , the plaintiff demanded the conveyance of the said property from the defendant, and tendered rupees to the defendant [or that all conditions were fulfilled, and all things happened, and all times elapsed, necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part].
3. That the defendant has not executed any conveyance of the said property to the plaintiff [or that there is a mortgage upon the said property, made by to , for rupees, registered in the office of , on the day of 18 , and still unsatisfied, for any other defect of title].
4. That the plaintiff has thereby lost the use of the money paid by him as such deposit as aforesaid and of other moneys provided by him for the completion of the said purchase, and has lost the expenses incurred by him in investigating the title of the defendant and in preparing to perform the agreement on his part, and has incurred expense in endeavouring to procure the performance thereof by the defendant.

5. The plaintiff prays judgment for rupees compensation.

No. 57.

FOR BREACH OF AGREEMENT TO PURCHASE LAND.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed.
[Or, That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff, forty bighás of land in the village of for rupees.]
2. That on the day of 18 , at , the plaintiff, being then the absolute owner of the said property [and the same being free from all incumbrances, as was made to appear to the defendant], tendered to the defendant a sufficient instrument of conveyance of the same [or was ready and willing, and offered, to convey the same to the defendant by a sufficient instrument], on the payment by the defendant of the said sum.
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 58.

Another Form.

FOR NOT COMPLETING A PURCHASE OF IMMOVEABLE PROPERTY.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That by an agreement dated the day of 18, it was agreed by and between the plaintiff and the defendant that the plaintiff should sell to the defendant and the defendant should purchase from the plaintiff a house and land at the price of rupees, upon the terms and conditions following (that is to say) :—

(a) That the defendant should pay the plaintiff a deposit of rupees in part of the said purchase-money on the signing of the said agreement, and the remainder on the day of 18, on which day the said purchase should be completed.

(b) That the plaintiff should deduce and make a good title to the said premises on or before the day of 18, and on payment of the said remainder of the said purchase-money as aforesaid should execute to the defendant a proper conveyance of the said premises, to be prepared at the defendant's expense.

2. That all conditions were fulfilled, and all things happened, and all times elapsed, necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part, yet the defendant did not pay the plaintiff the remainder of the said purchase-money as aforesaid on his part.

3. That the plaintiff has thereby lost the expense which he incurred in preparing to perform the said agreement on his part, and has been put to expense in endeavouring to procure the performance thereof by the defendant.

[Demand of judgment.]

No. 59.

FOR NOT DELIVERING GOODS SOLD.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff [on the day of 18], and that the plaintiff should pay therefor rupees on delivery.

2. That on the [said] day the plaintiff was ready and willing, and offered to pay the defendant the said sum upon delivery of the said goods.

3. That the defendant has not delivered the same, whereby the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[Demand of judgment.]

No. 60.

FOR BREACH OF CONTRACT TO EMPLOY.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, or in the capacity of foreman, or as the case may be], and that the defendant should employ the plaintiff as such, for the term of [one year], and pay him for his services rupees [monthly].

2. That on the day of 18, the plaintiff entered upon the service of the defendant as aforesaid, and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year, whereof the defendant always had notice.

3. That on the day of 18, the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

[Demand of judgment.]

No. 61.

FOR BREACH OF CONTRACT TO EMPLOY, WHERE THE EMPLOYMENT NEVER TOOK EFFECT.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. [As in the last preceding form.]
2. That on the day of 18, at , the plaintiff offered to enter upon the service of the defendant, and has ever since been ready and willing so to do.
3. That the defendant refused to permit the plaintiff to enter upon such service, or to pay him for his services.

[Demand of judgment.]

No. 62.

FOR BREACH OF CONTRACT TO SERVE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an [annual] compensation of rupees, and that the defendant should serve the plaintiff as [an artist] for the term of [one year].
2. That the plaintiff has always been ready and willing to perform his part of the said agreement [and on the day of 18, offered so to do].
3. That the defendant [entered upon] the service of the plaintiff on the above-mentioned day, but afterwards, on the day of 18, he refused to serve the plaintiff as aforesaid.

[Demand of judgment.]

No. 63.

AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP.

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , the plaintiff and defendant entered into an agreement, of which a copy is hereto annexed.
[Or state the tenor of the contract.]
- [2. That the plaintiff duly performed all the conditions of the said agreement on his part.]
3. That the defendant [built the house referred to in the said agreement in a bad and unworkmanlike manner].

[Demand of judgment.]

No. 64.

BY THE MASTER AGAINST THE FATHER OR GUARDIAN OF AN APPRENTICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , the defendant entered into an agreement, under his hand and seal, * a copy of which is hereto annexed.
[Or state the tenor of the contract.]
2. That, after the making of the said agreement, the plaintiff received the said [apprentice] into his service as such apprentice for the term aforesaid, and has always performed, and been ready and willing to perform, all things in the said agreement on his part to be performed.
3. That on the day of 18, the said [apprentice] wilfully absented himself from the service of the plaintiff, and continues so to do.

[Demand of judgment.]

* The form given in Act XIX. of 1850 requires the seal of the father or guardian.

THE FOURTH SCHEDULE.

No. 65.

BY THE APPRENTICE AGAINST THE MASTER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant entered into an agreement with the plaintiff and his [father], *E. F.*, under their hands and seals, a copy of which is hereto annexed.

2. That, after the making of the said agreement, the plaintiff entered into the service of the defendant with him after the manner of an apprentice, to serve for the term mentioned in the said agreement, and has always performed all things in the said agreement contained on his part to be performed.

3. That the defendant has not [instructed the plaintiff in the business of , or state any other breach, such as cruelty, failure to provide sufficient food, or other ill-treatment].

[Demand of judgment.]

No. 66.

ON A BOND FOR THE FIDELITY OF A CLERK.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff employed one *E. F.* as a clerk.

2. That on the day of 18 , at , the defendant agreed with the plaintiff, that if the said *E. F.* should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all moneys, evidences of debt, or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding rupees.

[Or, 2. That at the same time and place, the defendant bound himself to the plaintiff, by a writing under his hand, in the penal sum of rupees, conditioned that, if the said *E. F.* should faithfully perform his duties as clerk and cashier to the plaintiff, and should justly account to the plaintiff for all moneys, evidences of debt, or other property which should be at any time held by him in trust for the plaintiff, the same should be void, but not otherwise.]

[Or, 2. That at the same time and place, the defendant executed to the plaintiff a bond, a copy of which is hereto annexed.]

3. That between the day of 18 , and the day of 18 , the said *E. F.* received money and other property, amounting to the value of rupees, for the use of the plaintiff, for which he has not accounted to him, and the same still remains due and unpaid.

[Demand of judgment.]

No. 67.

BY TENANT AGAINST LANDLORD WITH SPECIAL DAMAGE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, by an instrument in writing, let to the plaintiff [the house No. , Street] for the term of years, contracting with the plaintiff that he, the plaintiff, and his legal representatives, should quietly enjoy possession thereof for the said term.

2. That all conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

3. That on the day of , during the said term, one *E. F.*, who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. That the plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend rupees in moving, and lost the custom of G. H. and I. J. by such removal].

[Demand of judgment.]

No. 68.

FOR BREACH OF WARRANTY OF MOVEABLES.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant warranted a steam-engine to be in good working order, and thereby induced the plaintiff to purchase the same of him, and to pay him rupees therefor.

2. That the said engine was not then in good working order, whereby the plaintiff incurred expense in having the said engine repaired, and lost the profits which could otherwise have accrued to him while the engine was under repair.

[Demand of judgment.]

No. 69.

ON AN AGREEMENT OF INDEMNITY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant, being partners in trade under the firm of A. B. and C. D., dissolved the said partnership, and mutually agreed that the defendant should take and keep all the partnership-property, pay all the debts of the firm, and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the said firm.

2. That the plaintiff duly performed all the conditions of the said agreement on his part.

3. That on the day of 18 , [a judgment was recovered against the plaintiff and defendant by one E. F., in the High Court of Judicature at upon a debt due from the said firm to the said E. F., and on the day of 18], the plaintiff paid rupees [in satisfaction of the same]

4. That the defendant has not paid the same to the plaintiff.

[Demand of judgment.]

No. 70.

BY SHIP-OWNER AGAINST FREIGHTOR FOR NOT LOADING.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, a copy of which is hereto annexed.

[Or, 1. That on , at , the plaintiff and defendant agreed by charter-party that the defendant should deliver to the plaintiff's ship at , on the day of 18 , five hundred tons of merchandise, which she should carry to , and there deliver, on payment of freight; and that the defendant should have days for loading, days for discharge, and days for demurrage, if required, at rupees per day].

2. That at the time fixed by the said agreement the plaintiff was ready and willing, and offered to receive [the said merchandise, or the merchandise mentioned in the said agreement] from the defendant.

3. That the period allowed for loading and demurrage has elapsed, but the defendant has not delivered the said merchandise to the said vessel.

Wherefore, the plaintiff demands judgment for rupees for demurrage and rupees additional for compensation.

C.—PLAINTS FOR COMPENSATION UPON WRONGS.

No. 71.

FOR TRESPASS ON LAND.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at , the defendant entered upon certain land of plaintiff, known as [and depastured the same with cattle, trod down the grass, cut the timber, and otherwise injured the same].

[Demand of judgment.]

No. 72.

FOR TRESPASS IN ENTERING A DWELLING-HOUSE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant entered a dwelling-house of the plaintiff called , and made a noise and disturbance therein for a long time, and broke open the doors of the said dwelling house, and removed, took, and carried away the fixtures and goods of the plaintiff therein, and disposed of the same to the defendant's own use, and expelled the plaintiff and his family from the possession of the said dwelling house, and kept them so expelled for a long time.

- 2 That the plaintiff was thereby prevented from carrying on his business, and incurred expense in procuring another dwelling-house for himself and family.

[Demand of judgment.]

No. 73.

FOR TRESPASS ON MOVEABLES.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at , the defendant broke open ten barrels of rum belonging to the plaintiff, and emptied their contents into the street [or seized and took the plaintiff's goods, that is to say, iron, rice, and household furniture, or as the case may be, and carried away the same, and disposed of them to his own use]:

or seized and took the plaintiff's cows and bullocks, and impounded them, and kept them impounded for a long time.

2. That the plaintiff was thereby deprived of the use of the cows and bullocks during that time, and incurred expense in feeding them and in getting them restored to him; and was also prevented from selling them at fair, as he otherwise would have done, and the said cows and bullocks are diminished in value to the plaintiff [otherwise state the injury according to the facts].

[Demand of judgment.]

No. 74.

FOR THE CONVERSION OF MOVEABLE PROPERTY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, plaintiff was in possession of certain goods described in the schedule hereto annexed [or of one thousand barrels of flour].

2. That on that day, at , the defendant converted the same to his own use, and wrongfully deprived the plaintiff of the use and possession of the same.

[Demand of judgment.]

The Schedule.

No. 75.

AGAINST A WAREHOUSEMAN FOR REFUSAL TO DELIVER GOODS.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , the defendant, in consideration of the payment to him of rupees [or rupees per barrel, per month, &c.], agreed to keep in his godown [one hundred barrels of flour], and to deliver the same to the plaintiff on payment of the said sum.

2. That thereupon the plaintiff deposited with the defendant the said, [hundred barrels of flour].

3. That on the day of 18, the plaintiff requested the defendant to deliver the said goods, and tendered him rupees [or the full amount of storage due thereon], but the defendant refused to deliver the same.

4. That the plaintiff was thereby prevented from selling the said goods to E. F., and the same are lost to the plaintiff.

[Demand of judgment.]

No. 76.

FOR PROCURING PROPERTY BY FRAUD.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was solvent, and worth rupees over all his liabilities].

2. That the plaintiff was thereby induced to sell [and deliver] to the defendant [dry goods] of the value of rupees.

3. That the said representations were false [or state the particular falsehoods], and were then known by the defendant to be so.

4. That the defendant has not paid for the said goods. [Or, if the goods were not delivered. That the plaintiff, in preparing for shipping the said goods, and procuring their restoration, expended rupees.]

[Demand of judgment.]

No. 77.

FOR FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO ANOTHER PERSON.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18, at , the defendant represented to the plaintiff that one E. F. was solvent and in good credit, and worth rupees over all his liabilities [or that E. F. then held a responsible situation, and was in good circumstances, and might safely be trusted with goods on credit].

2. That the plaintiff was thereby induced to sell to the said E. F. [rice] of the value of rupees [on month's credit].

3. That the said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [or to deceive and injure the plaintiff].

4. That the said E. F. [did not pay for the said goods at the expiration of the credit aforesaid, or] has not paid for the said rice, and the plaintiff has wholly lost the same by reason of the premises.

[Demand of judgment.]

No. 78.

FOR POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That he is, and at all the times hereinafter mentioned was, possessed of certain land called and situate in , and of a well therein, and of water

THE FOURTH SCHEDULE.

in the said well, and was entitled to the use and benefit of the said well and of the said water therein, and to have certain springs and streams of water which flowed and ran into the said well to supply the same to flow or run without being fouled or polluted.

2. That on the day of 18, the defendant wrongfully fouled and polluted the said well, and the said water therein, and the said springs and streams of water which flowed into the said well.

3. That by reason of the premises the said water in the said well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the said well and water.

[Demand of judgment.]

No. 79.

FOR CARRYING ON A NOXIOUS MANUFACTURE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called situate in

2. That ever since the day of 18, the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the said lands.

3. That thereby the trees, hedges, herbage, and crops of the plaintiff growing on the said lands, were damaged and deteriorated in value, and the cattle and live-stock of the plaintiff on the said lands became unhealthy, and divers of them were poisoned and died.

4. That by reason of the premises, the plaintiff was unable to depasture the said lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep, and farming-stock therefrom, and has been prevented from having so beneficial and healthy use and occupation of the said lands as he otherwise would have had.

[Demand of judgment.]

No. 80.

FOR OBSTRUCTING A WAY.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of].

2. That he was entitled to a right of way from the said [house] over a certain field to a public highway and back again from the said highway over the said field to the said house, for himself and his servants [with vehicles, or on foot] at all times of the year.

3. That on the day of 18, defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles, or on foot, or in any manner] along the said way [and has ever since wrongfully obstructed the same].

4. [State special damage, if any.]

[Demand of judgment.]

Another Form.

1. That the defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from to so as to obstruct it.

2. That thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones [or into the said trench], and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

[Demand of judgment.]

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No. 81.

FOR DIVERTING A WATER-COURSE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the , in the village of , district of .
2. That by reason of such possession the plaintiff was entitled to the flow of the said stream for working the said mill.
3. That on the day of 18 , the defendant, by cutting the bank of the said stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.
4. That, by reason thereof, the plaintiff has been unable to grind more than sacks per day, whereas, before the said diversion of water, he was able to grind sacks per day.

[Demand of judgment.]

No. 82.

FOR OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands, situate, &c., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.
2. That on the day of . the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[Demand of judgment.]

No. 83.

FOR WASTE BY A LESSEE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendant hired from him [the house No. . Street] for the term of .
 2. That the defendant occupied the same under such hiring.
 3. That during the period of such occupation, the defendant greatly injured the premises [defaced the walls, tore up the floors, and broke down the doors ; or otherwise specify the injuries as far as possible].
- The plaintiff prays judgment for . rupees compensation.

No. 84.

FOR ASSAULT AND BATTERY.

(Title.)

A. B., the above-named plaintiff, states as follows :—

- That on the day of 18 , at , the defendant assaulted and beat him.
- The plaintiff prays judgment for . rupees compensation.

No. 85.

FOR ASSAULT AND BATTERY WITH SPECIAL DAMAGE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant assaulted and beat him until he became insensible.

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2. That the plaintiff was thereby disabled from attending to his business for [six weeks thereafter], and was compelled to pay _____ rupees for medical attendance, and has been ever since disabled [from using his right arm]? [Or otherwise state the damage, as the case may be.]

Demand of judgment.

No. 86.

FOR ASSAULT AND FALSE IMPRISONMENT.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the _____ day of _____ 18____, at _____, the defendant assaulted the plaintiff and imprisoned him for _____ days [or hours]; [state special damage, if any, thus :—]

2. That, by reason thereof, the plaintiff suffered great pain of body and mind, and was exposed and injured in his credit and circumstances, and was prevented from carrying on his business and from providing for his family by his personal care and attention, and incurred expense in obtaining his liberation from the said imprisonment [or otherwise, as the case may be].

[Demand of judgment.]

No. 87.

FOR INJURIES CAUSED BY NEGLIGENCE ON A RAILROAD.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the _____ day of _____ 18____ the defendants were common carriers of passengers by railway between _____ and _____

2. That on that day the plaintiff was a passenger in one of the carriages of the, defendants on the said road.

3. That while he was such passenger, at _____ [or near the station of _____; or between the stations of _____ and _____], a collision occurred on the said railway, caused by the negligence and unskilfulness of the defendants' servants, whereby the plaintiff was much injured [having his leg broken, his head cut, &c., and state the special damage, if any, as], and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as [a salesman].

[Demand of judgment.]

[Or thus :—2. That on that day the defendants by their servants so negligently and unskilfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, &c., as in § 3.]

No. 88.

FOR INJURIES CAUSED BY NEGLIGENT DRIVING.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. The plaintiff is a shoemaker, carrying on business at _____. The defendant is a merchant of _____.

2. On the [23rd May 1875], the plaintiff was walking eastward along Chowringhee, in the city of Calcutta, at about 3 o'clock in the afternoon. He was obliged to cross Harrington Street, which is a street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the farther side thereof, a carriage of the defendant's, drawn by two horses, under the charge and control of the defendant's servants, was negligently, suddenly, and without any warning, turned at a rapid and dangerous pace out of Harrington Street into Chowringhee. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims rupees damages.

(Title.)

Written Statement of Defendant.

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, or that it was under the charge or control of the defendant's servants. The carriage belonged to [Messrs. E. F. and G. H.] of Street, Calcutta, livery stable-keepers, employed by the defendant to supply him with carriages and horses; and the person under whose charge and control the said carriage was, was the servant of the said [Messrs. E. F. and G. H.]

2. The defendant does not admit that the said carriage was turned out of Harrington Street either negligently, suddenly, or without warning, or at a rapid or dangerous pace

3. The defendant says that the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements of the third paragraph of the plaint.

No. 89.

FOR LIBEL; THE WORDS BEING LIBELLOUS IN THEMSELVES.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant published in a newspaper, called the [or in a letter addressed to E. F.], the following words concerning the plaintiff:—

[Set forth the words used.]

2. That the said publication was false and malicious.

[Demand of judgment.]

NOTE.—If the libel was in a language not the language of the Court, set out the libel *verbatim* in the foreign language in which it was published, and then proceed thus:—“Which said words, being translated into the language, have the meaning and effect following, and were so understood by the persons to whom they were so published, that is to say [here set out a literal translation of the libel in the language of the Court].”

No. 90.

FOR LIBEL; THE WORDS NOT BEING LIBELLOUS IN THEMSELVES.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff [is, and] was, on and before the day of 18 , a merchant doing business in the city of .

2. That on the day of 18 , at , the defendant published in a newspaper, called the [or in a letter addressed to E. F., or otherwise how published], the following words concerning the plaintiff:—

[“A. B. of this city has modestly retired to foreign lands. It is said that creditors to the amount of rupees are anxiously seeking his address.”]

3. That the defendant meant thereby that [the plaintiff had absconded to avoid his creditors, and with intent to defraud them].

4. That the said publication was false and malicious.

[Demand of judgment.]

THE FOURTH SCHEDULE.

No. 91.

FOR SLANDER; THE WORDS BEING ACTIONABLE IN THEMSELVES.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at , the defendant falsely and maliciously spoke, in the hearing of *E. F.* [or sundry persons], the following words concerning the plaintiff: ["He is a thief."]
2. That, in consequence of the said words, the plaintiff lost his situation as in the employ of

[Demand of judgment.]

No. 92.

FOR SLANDER; THE WORDS NOT BEING ACTIONABLE IN THEMSELVES.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at , the defendant falsely and maliciously said to one *E. F.*, concerning the plaintiff: ["He is a young man of remarkably easy conscience"].
2. That the plaintiff was then seeking employment as a clerk, and the defendant meant, by the said words, that the plaintiff was not trustworthy as a clerk.
3. That in consequence of the said words [the said *E. F.* refused to employ the plaintiff as a clerk].

[Demand of judgment.]

No. 93.

FOR MALICIOUS PROSECUTION.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at , the defendant obtained a warrant of arrest from [a magistrate of the said city, or, as the case may be] on a charge of , and the plaintiff was arrested thereon, and imprisoned for [days or hours, and gave bail in the sum of rupees to obtain his release].
2. That, in so doing, the defendant acted maliciously and without reasonable or probable cause.
3. That on the day of 18, the said magistrate dismissed the complaint of the defendant, and acquitted the plaintiff.
4. That many persons, whose names are unknown to the plaintiff, hearing of the said arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him; or, that, in consequence of the said arrest, the plaintiff lost his situation as clerk to one *E. F.*, or, that by reason of the premises the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

[Demand of judgment.]

D.—PLAINTS IN SUITS FOR SPECIFIC PROPERTY.

No. 94.

BY THE ABSOLUTE OWNER FOR THE POSSESSION OF IMMOVEABLE PROPERTY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That *X. Y.* was the absolute owner [of the estate, or the share of the estate] called , situate in the district of , the Government-revenue of which is rupees , and the estimated value rupees, or of the house No. , Street, in the town of Calcutta, the estimated value of which is rupees].

2. That on the day of 18 , Z illegally dispossessed the said X. Y. of the said estate [or share, or house].

3. That the said X. Y. has since died intestate, leaving the plaintiff, the said A. B., his heir and surviving.

4. That the defendant withholds the possession of the estate [or share or house] from the plaintiff.

The plaintiff prays judgment :

(1) for the possession of the said premises ;

(2) for rupees compensation for withholding the same.

Another Form.

A. B., the above-named plaintiff, states as follows :—

1. On the day of ; the plaintiff, by an instrument in writing, to the defendant a house and premises [No. 52, Russell Street, in the] for a term of five years from the day of , at the monthly rent of 300 rupees.

2. By the said instrument the defendant covenanted to keep the said house and premises in good and tenantable repair.

3. The said instrument also contained a clause of re-entry, entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved, whether demanded or not, should be in arrear for twenty-one days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4. On the day of 18 , a month's rent became due, and on the day of 18 , another month's rent became due ; on the day, of 18 , both had been in arrear for twenty-one days, and both are still due.

5. On the same day of 18 , the house and premises were not and are not now in good or tenantable repair, and it would require the expenditure of a large sum of money to reinstate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value. The plaintiff claims :

(1) possession of the said house and premises ;

(2) rupees for arrears of rent ;

(3) rupees compensation for the defendant's breach of his covenant to repair ;

(4) rupees for the occupation of the house and premises from the day of 18 , to the day of recovering possession.

No. 95.

BY THE TENANT.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That one E. F. is the absolute owner of [a piece of land in the town of Calcutta , bounded as follows :], the estimated value of which is rupees

2. That on the day of 18 , the said E. F. let the said premises to the plaintiff for years, from

3. That the defendant withholds the possession thereof from the plaintiff.

[Demand of judgment.]

No. 96.

FOR MOVEABLE PROPERTY WRONGFULLY TAKEN.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , plaintiff owned [or was possessed of] one hundred bags of flour, the estimated value of which is rupees.

2. That on that day, at , the defendant took the same.

The plaintiff prays judgment :

(1) for the possession of the said goods, or for rupees, in case such possession cannot be had ;

(2) for rupees compensation for the detention thereof.

THE FOURTH SCHEDULE.

No. 97.

FOR MOVABLES WRONGFULLY DETAINED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , plaintiff owed [or *state facts showing a right to the possession*] the goods mentioned in the schedule hereto annexed [or *describe the goods*], the estimated value of which is rupees.
2. That from that day until the commencement of this suit, the defendant has detained the same from the plaintiff.
3. That before the commencement of this suit, to wit, on the day of 18 , the plaintiff demanded the same from the defendant, but he refused to deliver them.

The plaintiff prays judgment :

- (1) for the possession of the said goods, or for rupees, in case such possession cannot be had ;
- (2) for rupees compensation for the detention thereof.

The Schedule.

No. 98.

AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE WITH NOTICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant [*C. D.*], for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth rupees over all his liabilities].
2. That the plaintiff was thereby induced to sell and deliver to the said *C. D.* [one hundred boxes of tea], the estimated value of which is rupees.
3. That the said representations were false, and were then known by the said *C. D.* to be so. [Or, That at the time of making the said representations, the said *C. D.* was insolvent, and knew himself to be so.]
4. That the said *C. D.* afterwards transferred the said goods to the defendant *E. F.* without consideration [or who had notice of the falsity of the representation].

The plaintiff prays judgment :

- (1) for the possession of the said goods, or for rupees, in case such possession cannot be had ;
- (2) for rupees compensation for the detention thereof.

E.—PLAINTS IN SUITS FOR SPECIAL RELIEF.

No. 99.

FOR RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at , contained [ten bighás].
2. That the plaintiff was thereby induced to purchase the same at the price of rupees in the belief that the said representation was true, and signed an instrument of agreement, of which a copy is hereto annexed. But no conveyance of the same has been executed to him.

3. That on the day of 18 , the plaintiff paid the defendant rupees as part of such purchase-money.

4. That the said piece of ground contained in fact only [five bighás].

The plaintiff prays judgment :

- (1) for rupees, with interest from the day of 18 ,
- (2) that the said agreement of purchase be delivered up and cancelled.

No. 100.

FOR AN INJUNCTION RESTRAINING WASTE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff is the absolute owner of [describe the property].
 2. That the defendant is in possession of the same, under a lease from the plaintiff.
 3. That the defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.
- The plaintiff prays judgment that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[Pecuniary compensation might also be prayed.]

No. 101.

FOR ABATEMENT OF A NUISANCE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No. •, Street, Calcutta].
 2. That the defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street].
 3. That on the day of 18, the defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff].
 4. That [the plaintiff has been compelled by reason of the premises, to abandon the said house, and has been unable to rent the same].
- The plaintiff prays judgment that the said nuisance be abated.

No. 102.

FOR AN INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE.

(Title.)

A. B., the above-named plaintiff, states as follows :—*[As in Form No. 81.]*

The plaintiff prays judgment that the defendant be restrained by injunction from diverting the water as aforesaid.

No. 103.

FOR RESTORATION OF MOVEABLE PROPERTY THREATENED WITH DESTRUCTION,
AND FOR AN INJUNCTION.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grandfather, which was executed by an eminent painter], and of which no duplicate exists [or state any facts showing that the property is of a kind that cannot be replaced by money].
2. That on the day of 18, he deposited the same for safe keeping with the defendant.
3. That on the day of 18, he demanded the same from the defendant, and offered to pay all reasonable charges for the storage of the same.
4. That the defendant refuses to deliver the same to the plaintiff, and threatens to conceal, dispose of, cut, or injure the same if required to deliver it up.

THE FOURTH SCHEDULE.

5. That no pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the said [painting].

The plaintiff prays judgment :

- (1) that the defendant be restrained by injunction from disposing of, injuring, or concealing the said [painting] ;
- (2) that he return the same to the plaintiff.

No. 104.

INTERPLEADER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That before the date of the claims hereinafter mentioned, one G. H. deposited with the plaintiff [*describe the property*] for [safe keeping].
2. That the defendant, C. D. claims the same [under an alleged assignment thereof to him from the said G. H.].
3. That the defendant, E. F., also claims the same [under an order of the said G. H. transferring the same to him].
4. That the plaintiff is ignorant of the respective rights of the defendants.
5. That has no claim upon the said property, and is ready and willing to deliver it to such persons as the Court shall direct.
6. That this suit is not brought by collusion with either of the defendants.

The plaintiff prays judgment :

- (1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto ;
- (2) that they be required to interplead together concerning their claims to the said property ;
- [(3) that some person be authorized to receive the said property pending such litigation ;]
- (4) that upon delivering the same to such [person], the plaintiff be discharged from all liability to either of the defendants in relation thereto.

No. 105.

ADMINISTRATION BY CREDITO.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. E. F., late of _____, was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of _____ [*here insert nature of debt and security, if any*].
2. The said E. F. made his will, dated the _____ day of _____, and thereof appointed C. D. executor [*or devised his estate in trust, &c., or died intestate, as the case may be*].
3. The said will was proved by the said C. D. [*or letters of administration were granted, &c.*].
4. The defendant has possessed himself of the moveable [*and immoveable, or the proceeds of the immoveable*] property of the said E. F., and has not paid the plaintiff his said debt.
5. The said E. F. died on or about the _____ day of _____.
6. The plaintiff prays that an account may be taken of the moveable [*and immoveable*] property of the said E. F., deceased, and that the same may be administered under the decree of the Court.

No. 106.

ADMINISTRATION BY SPECIFIC LEGATEE.

(Title.)

[*Alter form No. 105 thus :—*]

[*Omit paragraph 1, and commence paragraph 2—*] E. F., late of _____, duly made his last will, dated the _____ day of _____, and thereof appointed C. D., executor, and by such will bequeathed to the plaintiff [*here state the specific legacy*].

For paragraph 4 substitute—

The defendant is in possession of the moveable property of the said *E. F.*, and, amongst other things, of the said [here name the subject of the specific bequest].

For the commencement of paragraph 6 substitute—

The plaintiff prays that the defendant may be ordered to deliver to him the said [here name the subject of the specific bequest], or that, &c.

No. 107.

ADMINISTRATION BY PECUNIARY LEGATRE.

(Title.)

[Alter Form No. 105 thus :—]

[Omit paragraph 1, and substitute for paragraph 2—] *E. F.*, late of, duly made his last will, dated the day of, and thereof appointed *C. D.*, executor, and by such will bequeathed to the plaintiff a legacy of rupees.

In paragraph 4, substitute "legacy" for "debt."

Another Form.

Between *E. F.* ... and ... Plaintiff,

G. H. ... Defendant.

E. F., the above-named plaintiff, states as follows :—

A. B., of *K.*, in the, duly made his last will, dated the [first day of March 1878], whereby he appointed the defendant and *M. N.* [who died in the testator's lifetime] executors thereof, and bequeathed his property, whether moveable or immoveable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his immoveable property for the person who would be the testator's heir-at-law, and as to his moveable property for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The testator died on the [first day of July 1878], and his will was proved by the defendant on the [fourth day of October 1878]. The plaintiff has not been married.

3. The testator was at his death entitled to moveable and immoveable property; the defendant entered into the receipt of the rents of the immoveable property, and got in the moveable property; he has sold some part of the immoveable property.

The plaintiff claims—

- (1) to have the moveable and immoveable property of *A. B.* administered in this Court, and for that purpose to have all proper directions given and accounts taken.
- (2) such farther or other relief as the nature of the case may require.

Between *E. F.* ... and ... Plaintiff,

G. H. ... Defendant.

Written Statement of Defendant.

1. *A. B.*'s will contained a charge of debts; he died insolvent; he was entitled at his death to some immoveable property which the defendant sold, and which produced the nett sum of rupees, and the testator had some moveable property which the defendant got in, and which produced the nett sum of rupees.

2. The defendant applied the whole of the said sums and the sum of rupees which the defendant received from rents of the immoveable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the [tenth day of January 1880], and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4. The defendant submits that the plaintiff ought to pay the costs of this suit.

No. 108.

EXECUTION OF TRUSTS.

IN THE COURT

, AT

Civil Suit No.

A. B., of

... Plaintiff,

against

C. D., of

, the beneficiary [or one of

the beneficiaries],

... Defendant.

A. B., the above-named plaintiff, states as follows :—

1. That he is one of the trustees under an instrument of settlement, bearing date on or about the day of , made upon the marriage of E. F. and G. H., the father and mother of the defendant [or an instrument of assignment of the estate and effects of E. F. for the benefit of C. D., the defendant, and other the creditors of E. F.].

2. The said A. B. has taken upon himself the burden of the said trust, and is in possession of [or of the proceeds of] the moveable and immoveable property conveyed [or assigned] by the before-mentioned deed.

3. The said C. D. claims to be entitled to a beneficial interest under the before-mentioned deed.

4. The plaintiff is desirous to account for all the rents and profits of the said immoveable property [and the proceeds of the sale of the said, or of part of the said, immoveable property, or moveable, or the proceeds of the sale of, or of part of, the said moveable property, or the profits accruing to the plaintiff as such trustee in the execution of the said trust.]; and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust-estate may be administered in the Court for the benefit of the said C. D., the defendant, and all other persons who may be interested in such administration, in the presence of the said C. D. and such other persons so interested as the Court may direct, or that the said C. D. may shew good cause to the contrary.

[N.B.—Where the suit is by a beneficiary, the plaint may be modelled, mutatis mutandis, on the plaint by a legatee.]

No. 109.

FORECLOSURE OR SALE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. By a mortgage-deed, dated the day of 18, a house with the garden and appurtenances, situated within the jurisdiction of this Court, were conveyed by the defendant to him, the plaintiff, his heirs [or executors, administrators], and assigns, for securing the principal sum of Rs. , together with interest thereon at the rate of Rs. per centum per annum, subject to redemption upon payment by the said defendant of the said principal and interest at a day long since past.

2. There is now due from the defendant to the plaintiff the sum of Rs. for principal and interest on the said mortgage.

3. The plaintiff prays (a) that the Court will order the defendant to pay him the said sum of Rs. , with such further interest as may accrue between the filing of the plaint and the day of payment, and also the costs of this suit, on some day to be named by the Court, and in default that the right to redeem the said mortgaged premises may be foreclosed, and the plaintiff placed in possession of the same premises; or (b) that the said premises may be sold, and the proceeds applied in and towards the payment of the amount of the said principal, interest, and costs;

and (c) that if such proceeds shall not be sufficient for the payment in full of such amount, the defendant do pay to the plaintiff the amount of the deficiency with interest thereon at the rate of six per cent. per annum until realization; and (d) that for that purpose all proper directions may be given and accounts taken by the Court.

No. 110.

REDEMPTION.

(Title.)

[Alter Form No. 109 thus :—]

Transpose parties and also the facts in paragraph 1.

For paragraph 2, substitute—

2. There is now due for the plaintiff to the defendant for principal and interest on the said mortgage, the sum of Rs. , which the plaintiff is ready and willing to pay to the defendant, of which the defendant, before filing this plaint, had notice.

For paragraph 3, substitute—

The plaintiff prays that he may redeem the said premises, and that the defendant may be ordered to re-convey the same to him upon payment of the said sum of Rs. and interest, with such costs (if any) as the Court may order, upon a day to be named by the Court, and that the Court will give all proper directions for the preparation and execution of such re-conveyance and doing such other acts as may be necessary to put him into possession of the said premises, freed from the said mortgage.

No. 111.

SPECIFIC PERFORMANCE. (No. 1.)

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. By an agreement, dated the day of , and signed by the above-named defendant C. D., he the said C. D. contracted to buy [or sell to] him certain immoveable property therein described and referred to, for the sum of rupees.

2. He has applied to the said C. D. specifically to perform the said agreement on his part, but he has not done so.

3. The said A. B. has been and still is ready and willing specifically to perform the agreement on his part, of which the said C. D. has had notice.

4. The plaintiff prays that the Court will order the said C. D. specifically to perform the said agreement and to do all acts necessary to put the said A. B. in full possession of the said property [or to accept a conveyance and possession of the said property], and to pay the costs of the suit.

[N. B.—In suits for delivery up, to be cancelled, of any agreement, omit paragraphs 2 and 3, and substitute a paragraph stating generally the grounds for requiring the agreement to be delivered up to be cancelled—such as that the plaintiff signed it by mistake, under duress, or by the fraud of the defendant—and alter the prayer according to the relief sought.]

No. 112.

SPECIFIC PERFORMANCE. (No. 2.)

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendant was absolutely entitled to certain immoveable property described in the agreement hereto annexed.

2. That on the same day, the plaintiff and defendant entered into an agreement, under their hands, a copy of which is hereto annexed.

3. That on the day of 18 , the plaintiff tendered rupees to the defendant, and demanded a conveyance of the said property.

4. That on the day of 18 , the plaintiff again demanded such conveyance. [Or, That the defendant refused to convey the same to the plaintiff.]

5. That the defendant has not executed such conveyance.

6. That the plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

The plaintiff prays judgment :

(1) that the defendant execute to the plaintiff a sufficient conveyance of the said property [following the terms of the agreement] ;

(2) for rupees compensation for withholding the same.

No. 113.

PARTNERSHIP.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. He and the said C. D., the defendant, have been, for the space of years [or months] last past, carrying on business together at , within the jurisdiction of this Court, under certain articles of partnership in writing, signed by them respectively [or under a certain deed sealed and executed by them respectively, or under a verbal agreement between them, the said plaintiff and defendant].

2. Divers disputes and differences have arisen between the plaintiff and defendant as such partners, whereby it has become impossible to carry on the said business in partnership with advantage to the partners.

3. The plaintiff desires to have the said partnership dissolved, and he is ready and willing to bear his share of the debts and obligations of the partnership according to the terms of the said articles [or deed, or agreement].

4. The plaintiff prays the Court to decree a dissolution of the said partnership, and that the accounts of the said partnership-trading may be taken by the Court, and the assets thereof realized, and that each party may be ordered to pay into Court any balance due from him upon such partnership-account, and that the debts and liabilities of the said partnership may be paid and discharged, and that the costs of the suit may be paid, out of the partnership-assets, and that any balance remaining of such assets, after such payment and discharge, and the payment of the said costs, may be divided between the plaintiff and defendant, according to the terms of the said articles [or deed, or agreement], or that, if the said assets shall prove insufficient, he the plaintiff and the said defendant may be ordered to contribute in such proportions as shall be just to a fund to be raised for the payment and discharge of such debts, liabilities, and costs. And to give such other relief as the Court shall think fit.

This plaint was filed by , of , pleader for the plaintiff, [or by].

[N. B.—In suits for winding-up of any partnership, omit the prayer for dissolution : but instead thereof insert a paragraph stating the fact of the partnership having been dissolved.]

No. 114.

FORMS OF CONCISE STATEMENTS.

[Code of Civil Procedure, section 58.]

Money lent.	The plaintiff's claim is	rs. for money lent [and interest].
Several demands.	The plaintiff's claim is	rs. whereof rs. is for the price of
	goods sold, and	as. for money lent, and rs. for interest.
Rent.	The plaintiff's claim is	rs. for arrears of rent.
Salary, &c.	The plaintiff's claim is	rs. for arrears of salary as a clerk [or as
	the case may be].	
Interest.	The plaintiff's claim is	rs. for interest upon money lent.
General average.	The plaintiff's claim is	rs. for a general average contribution.
Freight, &c.	The plaintiff's claim is	rs. for freight and demurrage.

FORMS OF CONCISE STATEMENTS—continued.

Banker's balance.	The plaintiff's claim is as a banker.	rs. for money deposited with the defendant.
Fees, &c., as pleader.	The plaintiff's claim is money expended] as a pleader.	rs. for fees for work done [and] rs.
Commission.	The plaintiff's claim is character—as auctioneer, cotton-broker, &c.]	rs. for commission earned as [state]
Medical attendance.	The plaintiff's claim is	rs. for medical attendances.
Return of premium.	The plaintiff's claim is policies of insurance.	rs. for a return of premiums paid upon
Warehouse-rent.	The plaintiff's claim is	rs. for the warehousing of goods.
Carriage of goods.	The plaintiff's claim is	rs. for the carriage of goods by railway.
Use and occupation of house.	The plaintiff's claim is	rs. for the use and occupation of a house.
Hire of goods.	The plaintiff's claim is	rs. for the hire of [furniture].
Work done.	The plaintiff's claim is	rs. for work done as a [surveyor].
Board and lodging.	The plaintiff's claim is	rs. for board and lodging.
Schooling.	The plaintiff's claim is of X. Y.	rs. for the board, lodging, and] tuition
Money received.	The plaintiff's claim is as pleader [or factor, or collector, or, &c.] of the plaintiff.	rs. for money received by the defendant
Fees of office.	The plaintiff's claim is under colour of the office of	rs. for fees received by the defendant
Money over-paid.	The plaintiff's claim is for the carriage of goods by railway.	rs. for a return of money overcharged
	The plaintiff's claim is the defendant as	rs. for a return of fees overcharged by
Return of money by stake-holder.	The plaintiff's claim is the defendant as stake-holder.	rs. for a return of money deposited with
Money won from stake-holder.	The plaintiff's claim is	rs. for money entrusted to the defendant as stake-holder, and become payable to plaintiff.
Money entrusted to agent.	The plaintiff's claim is the defendant as agent of the plaintiff.	rs. for a return of money entrusted to
Money obtained by fraud.	The plaintiff's claim is the plaintiff by fraud.	rs. for a return of money obtained from
Money paid by mistake.	The plaintiff's claim is defendant by mistake.	rs. for a return of money paid to the
Money paid for consideration which has failed.	The plaintiff's claim is defendant for [work to be done, or work left undone; or a bill to be taken up, or a bill not taken up, or, &c.].	rs. for a return of money paid to the
	The plaintiff's claim is	rs. for a return of money paid as a deposit upon shares to be allotted.
Money paid by surety for defendant.	The plaintiff's claim is his surety.	rs. for money paid for the defendant as
Rent paid.	The plaintiff's claim is defendant.	rs. for money paid for rent due by the
Money paid on accommodation bill.	The plaintiff's claim is indorsed] for the defendant's accommodation.	rs. upon a bill of exchange accepted [or
Contribution by surety.	The plaintiff's claim is paid by the plaintiff as surety.	rs. for a contribution in respect of money
By co-debtor.	The plaintiff's claim is debt of the plaintiff and the defendant, paid by the plaintiff.	rs. for a contribution in respect of a joint

THE FOURTH SCHEDULE.

FORMS OF CONCISE STATEMENTS—continued.

Money paid for calls.	The plaintiff's claim is against which the defendant	rs. for money paid for calls upon shares was bound to indemnify the plaintiff.
Money payable under award.	The plaintiff's claim is	rs. for money payable under an award.
Life-policy.	The plaintiff's claim is life of <i>X. Y.</i> , deceased.	rs. upon a policy of insurance upon the
Money bond.	The plaintiff's claim is rs. and interest.	rs. upon a bond to secure payment of
Foreign judgment.	The plaintiff's claim is in [the Empire of Russia].	rs. upon a judgment of the Court
Bills of exchange, &c.	The plaintiff's claim is ant.	rs. upon a cheque drawn by the defendant.
	The plaintiff's claim is drawn or indorsed] by the defendant.	rs. upon a bill of exchange accepted [or
	The plaintiff's claim is indorsed] by the defendant.	rs. upon a promissory note made [or in-
	The plaintiff's claim is	rs. against the defendant, <i>A. B.</i> , as acceptor, and against the defendant, <i>C. D.</i> , as drawer [or indorser] of a bill of exchange.
Surety.	The plaintiff's claim is	rs. against the defendant as surety for the price of goods sold.
	The plaintiff's claim is	rs. against the defendant, <i>A. B.</i> , as principal, and against the defendant, <i>C. D.</i> , as surety, for the price of goods sold [or for arrears of rent, or for money lent, or for money received by the defendant, <i>A. B.</i> , as traveller for the plaintiff, or, &c.].
Calls.	The plaintiff's claim is	rs. for calls upon shares.

Indorsement for Costs, &c.

[Add to the above forms] and rs. for costs; and if the amount claimed be paid to the plaintiff or his pleader within days [or, if the summons is to be served out of the jurisdiction, insert the time for appearance limited by the order] from the service hereof, further proceedings will be stayed.

Damages and other claims.

Agent, &c.	The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller.	
	The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller [and	rs. for arrears of wages].
	The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.	
	The plaintiff's claim is for damages for breach of duty as factor [or, &c.] of the plaintiff [and	rs. for money received as factor, or &c.].
Apprentices.	The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of <i>X. Y.</i> to the defendant [or plaintiff].	
Arbitration.	The plaintiff's claim is for damages for non-compliance with the award of <i>X. Y.</i>	
Assault, &c.	The plaintiff's claim is for damages for assault [and false imprisonment, and for malicious prosecution].	
By husband and wife.	The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff. <i>C. D.</i>	
Against husband and wife.	The plaintiff's claim is for damages for assault by the defendant, <i>C. D.</i>	
Pleader.	The plaintiff's claim is for damages for injury by the defendant's negligence as pleader of the plaintiff.	
Bailment.	The plaintiff's claim is for damages for negligence in the custody of goods [and for wrongfully detaining the same].	

FORMS OF CONCISE STATEMENTS—*continued.*

Pledge.	The plaintiff's claim is for damages for negligence in the keeping of goods pawned [and for wrongfully detaining the same].
Hire.	The plaintiff's claim is for damages for negligence in the custody of furniture [or a carriage] lent on hire [and, for wrongfully, &c.].
Banker.	The plaintiff's claim is for damages for wrongfully neglecting [or refusing] to pay the plaintiff's cheque.
Bill.	The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts.
Bond.	The plaintiff's claim is upon a bond conditioned not to carry on the trade of a
Carrier.	The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway.
	The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.
	The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.
	The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.
Charter-party.	The plaintiff's claim is for damages for breach of charter-party of ship [<i>Mary</i>].
Claim for return of goods damages.	The plaintiff's claim is for return of household furniture [or, &c.], of their value, and for damages for detaining the same.
Damages for depriving of goods.	The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c.
Defamation.	The plaintiff's claim is for damages for libel.
	The plaintiff's claim is for damages for slander.
Wrongful distress.	The plaintiff's claim is for damages for improperly distraining.
	[<i>This Form shall be sufficient, whether the distress complained of be wrongful, or excessive, or irregular.</i>]
Ejectment.	The plaintiff's claim is to recover possession of a house, No.
	in Street, or of a farm, called Blackacre, situate in the of
	in the of
To establish title and recover rents.	The plaintiff's claim is to establish his title to [<i>here describe property</i>], and to recover the rents thereof.
	[<i>The two previous Forms may be combined.</i>]
Fishery.	The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing.
Fraud.	The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse [or a business, or shares, or, &c.].
	The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of A. B.
Guarantee.	The plaintiff's claim is for damages for breach of a contract of guarantee for A. B.
	The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to destroy.
Insurance.	The plaintiff's claim is for a loss under a policy upon the ship [<i>Royal Charter</i>], and freight of cargo [or for return of premiums].
	[<i>This Form shall be sufficient, whether the loss claimed be total or partial.</i>]
Fire-insurance.	The plaintiff's claim is for a loss under a policy of fire-insurance upon house and furniture.
	The plaintiff's claim is for damages for breach of a contract to insure a house.
Landlord and tenant.	The plaintiff's claim is for damages for breach of a contract to keep a house in repair.

THE FOURTH SCHEDULE.

FORMS OF CONCISE STATEMENTS—*continued.*

Landlord and tenant.	The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.
Medical man.	The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.
Mischiefous animal.	The plaintiff's claim is for damages for injury by the defendant's dog.
Negligence.	The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants. The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants. The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway-station from the defective condition of the station. The plaintiff's claim is as executor of <i>A. B.</i> , deceased, for damages for the death of the said <i>A. B.</i> , from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.
Act XIII. of 1855.	
Promise of marriage.	The plaintiff's claim is for damages for breach of promise of marriage.
Sale of goods.	The plaintiff's claim is for damages for breach of contract to accept and pay for goods. The plaintiff's claim is for damages for non-delivery [<i>or short delivery, or defective quantity, or other breach of contract of sale</i>] of cotton [<i>or, &c.</i>]. The plaintiff's claim is for damages for breach of warranty of a horse.
Sale of lands.	The plaintiff's claim is for damages for breach of a contract to sell [<i>or purchase</i>] land. The plaintiff's claim is for damages for breach of a contract to let [<i>or take</i>] a house. The plaintiff's claim is for damages for breach of a contract to sell [<i>or purchase</i>] the lease, with good-will, fixtures, and stock-in-trade of a public-house. The plaintiff's claim is for damages for breach of covenant for title [<i>or for quiet enjoyment, or, &c.</i>] in a conveyance of land.
Trespass on land.	The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [<i>or cutting his grass, or felling his timber, or pulling down his fences, or removing his gate, or using his road or path, or crossing his field, or depositing sand there, or carrying away gravel from thence, or carrying away stones from his river</i>].
Support.	The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [<i>or house, or mine</i>]. The plaintiff's claim is for damages for wrongfully obstructing a way [<i>or public highway or private way</i>].
Way.	
Water-course, &c.	The plaintiff's claim is for damages for wrongfully diverting [<i>or obstructing, or polluting, or diverting, water from</i>] a water-course. The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [<i>or into the plaintiff's mine</i>]. The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.
Pasture.	The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture. <i>[This Form shall be sufficient, whatever the nature of the right to pasture be.]</i>
Light.	The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house.

FORMS OF CONCISE STATEMENTS—continued.

Patent.	The plaintiff's claim is for damages for the infringement of the plaintiff's patent.
Copy-right.	The plaintiff's claim is for damages for the infringement of the plaintiff's copy-right.
Trade-mark.	The plaintiff's claim is for damages for wrongfully using [or imitating] the plaintiff's trade-mark.
Work.	The plaintiff's claim is for damages for breach of a contract to build a ship [or to repair a house, &c.]. The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, &c.
Nuisance.	The plaintiff's claim is for damages to his house, trees, &c., caused by noxious vapours from the defendant's factory [or, &c.]. The plaintiff's claim is for damages from nuisance by noise from the defendant's works [or stables, or, &c.].
Injunction.	[Add to indorsement]:—and for an injunction. [Add to indorsement where claim is to land, or to establish title, or both]:—
Mesne-profits.	and for mesne-profits.
Arrears of rent.	and for an account of rents or arrears of rent.
Breach of covenant.	and for breach of covenant for [repairs].

1. *Creditor to administer Estate.*

The plaintiff's claim is as a creditor of *X. Y.*, of , deceased, to have the moveable and immoveable property of the said *X. Y.* administered. The defendant, *C. D.*, is sued as the administrator of the said *X. Y.* [and the defendants, *E. F.* and *G. H.*, as his co-heirs-at-law].

2. *Legatee to administer Estate.*

The plaintiff's claim is as a legatee under the will dated the day of 18 , of *X. Y.*, deceased, to have the moveable and immoveable property of the said *X. Y.* administered. The defendant, *C. D.*, is sued as the executor of the said *X. Y.* [and the defendants, *E. F.* and *G. H.*, as his devisees].

3. *Partnership.*

The plaintiff's claim is to have an account taken of the partnership-dealings between the plaintiff and defendant [under articles of partnership dated the day of], and to have the affairs of the partnership wound up.

4. *By Mortgage.*

The plaintiff's claim is to have an account taken of what is due to him for principal, interest, and costs on a mortgage dated the day of , made between [parties] [or by deposit of title-deeds], and that the mortgage may be enforced by foreclosure or sale.

5. *By Mortgageor.*

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage, dated , and made between [parties], and to redeem the property comprised therein.

6. *Raising Portions.*

The plaintiff's claim is that the sum of rs., which, by a deed of settlement, dated , was provided for the portions of the younger children of , may be raised.

7. *Execution of Trusts.*

The plaintiff's claim is to have the trusts of an indenture, dated , and made between [parties], carried into execution.

THE FOURTH SCHEDULE.

FORMS OF CONCISE STATEMENTS—continued.

8. *Cancellation or Rectification.*

The plaintiff's claim is to have a deed, dated , and made between [parties], set aside or rectified.

9. *Specific Performance.*

The plaintiff's claim is for specific performance of an agreement, dated the day of , for the sale by the plaintiff to the defendant of certain [freehold] hereditaments at

No. 115.

PROBATE.

1. *By an executor or legatee propounding a will in solemn form.*

The plaintiff claims to be executor of the last will, dated the day of , of C. D., late of , deceased, who died on the day of , and to have the said will established. This summons is issued against you as one of the next-of-kin of the said deceased [or as the case may be].

2. *By an executor or legatee of a former will, or a next-of-kin, &c., of the deceased, seeking to obtain the revocation of a probate granted in common form.*

The plaintiff claims to be executor of the last will, dated the day of , of C. D., late of , deceased, who died on the day of , and to have the probate of a pretended will of the said deceased, dated the , day of , revoked. This summons is issued against you as the executor of the said pretended will [or as the case may be].

3. *By an executor or legatee of a will when letters of administration have been granted as in an intestacy.*

The plaintiff claims to be executor of the last will of C. D., late of , deceased, who died on the day of , dated the day of .

The plaintiff claims that the grant of letters of administration of the estate of the said deceased obtained by you should be revoked, and probate of the said will granted to him.

4. *By a person claiming a grant of administration as a next-of-kin of the deceased, but whose interest as next-of-kin is disputed.*

The plaintiff claims to be the brother and sole next-of-kin of C. D., of , deceased, who died on the day of , intestate, and to have as such a grant of administration to the personal estate of the said intestate. This writ is issued against you because you have entered a caveat, and have alleged that you are the sole next-of-kin of the deceased [or as the case may be].

THE FOURTH SCHEDULE.

No. 117.

SUMMONS FOR DISPOSAL OF SUIT.

Sections 64 and 68 of the Code of Civil Procedure.

(Title.)

To

dwelling at

WHEREAS has instituted a suit against you for , you are hereby summoned to appear in this Court, in person or by a duly authorized pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions, on , the day of 18 , at o'clock in the forenoon, to answer the above-named plaintiff; and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence; and you will bring with you, or send by your pleader, , which the plaintiff desires to inspect, and any documents on which you intend to rely in support of your defence.

NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence-money.

2. If you admit the demand, you should pay the money into Court, with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

.GIVEN under my hand and the seal of the Court this day of 18

[L. S.]

Judge.

NOTE.—If written statements are required, say—You are [or such a party is, as the case may be] required to put in a written statement by the day of .

THE FOURTH SCHEDULE.

No. 118.

SUMMONS FOR SETTLEMENT OF ISSUES.

Sections 64 and 68 of the Code of Civil Procedure.

(Title.)

To

dwelling at

- NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have summonses from this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence-money.
2. If you admit the demand, you should pay the money into Court, with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

WHEREAS has instituted a suit against you for , you are hereby summoned to appear in this Court in person or by a duly authorized pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions on , the day of 18 , at o'clock in the forenoon, to answer the above-named plaintiff; and you are hereby required to take notice that, in default of your appearance on the day before mentioned, the issues will be settled in your absence; and you will bring with you, or send by your pleader, , which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court this day of 18

[L. S.]

Judge.

NOTE.—If written statements are required, say—You are [or such a party is, as the case may be] required to put in a written statement by the day of .

THE FOURTH SCHEDULE.

No. 119.

SUMMONS TO APPEAR.

Section 68 of the Code of Civil Procedure.

No. OF SUIT.

IN THE COURT OF AT

Plaintiff.

Defendant.

[Name, description, and address.]

WHEREAS [here enter the name, description, and address of the plaintiff] has instituted a suit in this Court against you [here state the particulars of the claim as in the register] : you are hereby summoned to appear in this Court in person on the day of at in the forenoon [if not specially required to appear in person state—"in person or by a pleader of the Court duly instructed and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions"] to answer the above-named plaintiff. If the summons be for the final disposal of the suit, this further direction shall be added here—"and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day"; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence; and you will bring with you [or send by your agent] [here mention any document the production of which may be required by the plaintiff], which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court this day of 18

[L. S.]

Judge.

No. 120.

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURISDICTION OF ANOTHER COURT.

Section 85 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18
A. B., of
against
C. D., of

The day of 18

WHEREAS it is stated in the plaint that the defendant in the above suit is at present residing in , but that the right to sue accrued within the jurisdiction of this Court : it is ordered that a summons returnable on the day of 18 , be forwarded for service on the said defendant, to the Court of , with a duplicate of this proceeding.

[L. S.]

Judge.

No. 121.

TO ACCOMPANY RETURN(SUMMONS OF ANOTHER COURT.

Section 85 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18

The day of 18
A. B., of
against
C. D., of

Read proceeding from the forwarding for service on
in Civil No. of that Court.

Read bailiff's endorsement on the back of the process stating that the and proof of the above having been duly taken by me on the [oath or] affirmation of and , it is ordered that the be returned to the with a copy of this proceeding.

[L. S.]

Judge.

NOTE.—This form will be applicable to process other than summons, the service of which may have to be effected in the same manner.

No. 122.

DEFENDANT'S STATEMENT.

Section 110 of the Code of Civil Procedure.

(Title.)

I, the undersigned defendant [or one of the defendants], disclaim all interest under the will of the said E. F., in the plaint, named [or as heir-at-law, or as next-of-kin, or one of the next-of-kin, of E. F., deceased, in the said plaint named].

Or, I, the undersigned defendant, state that I admit [or deny] [here repeat in the language of the plaint the statements admitted or denied].

Or, I, the undersigned defendant, submit that, upon the facts stated in the plaint, it does not appear that there is any agreement which can be legally enforced [or that it appears upon the said plaint that I am jointly liable with one E. F., who is not a party to the suit, and not severally liable as by the plaint appears, or that it appears by the said plaint that G. H. should have been a joint plaintiff with the said A. B. in the said suit, or as the case may be].

Or, that the plaintiff has conveyed his interest in the said mortgage [or right to redeem] to one I. J. [or that I have conveyed or assigned to H. L., by way of further charge for securing the sum of Rs. , the right to redeem in the property sought by the suit to be foreclosed].

Or, that since the dissolution of the partnership the plaintiff has executed an instrument, whereby the plaintiff covenants to discharge all debts and liabilities of the partnership, and generally to release me from all claims and liabilities either by or to himself and others in respect of the said partnership-trading [or as the case may be].

(Signed) C. D.,

Defendant.

No. 123.

INTERROGATORIES.

Section 121 of the Code of Civil Procedure.

IN THE COURT OF

AT

Givif Suit, No.

of 18

A. B.

against

C. D., E. F., and G. H.

Interrogatories on behalf of the above-named A. B. [or C. D.] for the examination of the above-named [E. F. and G. H., or A. B.].

1. Did not, &c.

2. Has not, &c.

The defendant E. F. is required to answer the interrogatories numbered

The defendant G. H. is required to answer the interrogatories numbered

THE FOURTH SCHEDULE.

No. 124.

FORM OF NOTICE TO PRODUCE DOCUMENTS.

Section 131 of the Code of Civil Procedure.

IN THE COURT OF

Civil Suit, No. . . .

AT

18 .

A. B.

against

C. D.

Take notice that the plaintiff [or defendant] requires you to produce for his inspection the following documents referred to in your plaint [or written statement or affidavit], dated the . . . day of . . . 18 .

Describe documents required.

X. Y., Pleader for the plaintiff [or the defendant].

To Z.,

Pleader for the defendant [or plaintiff].

No. 125.

SUMMONS TO ATTEND AND GIVE EVIDENCE.

Sections 159 and 163 of the Code of Civil Procedure.

(Title.)

To

WHEREAS your attendance is required to . . . on behalf of the . . . in the above cause, you are hereby required [personally to appear before this Court] on the . . . day of . . . 18 , at the hour of . . . A. M. [and] to bring with you or to send to this Court

A sum of Rs. . . . , being your travelling and other expenses and subsistence-allowance for one day, is herewith sent. If you do not comply with this order, you will be subject to the consequence of non-attendance laid down in the Code of Civil Procedure, section 170.

Notice—(1.) If you are summoned only to produce a document, and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.

(2.) If you are to be detained beyond the day aforesaid, a sum of Rs. . . . will be tendered to you for each day's attendance beyond the day specified.

GIVEN under my hand and the seal of the Court, this . . . day of . . . 18 .

[L. S.]

Judge.

No. 126.

Another Form.

NO OF SUIT.

IN THE COURT OF

AT

Plaintiff.

Defendant.

To

[Name, description, and address.]

You are hereby summoned to appear in this Court in person on the . . . day of . . . at . . . in the forenoon, to give evidence in behalf of the plaintiff [or the defendant] in the above-mentioned suit, and to produce [here describe with convenient certainty any document the production of which may be required. If the summons be only to give evidence, or if it be only to produce a document, it must be expressed accordingly], and you are not to depart thence until you have been examined or have produced the document] and the Court has risen, or unless you have obtained the leave of the Court.

THE FOURTH SCHEDULE.

515

FORMS OF DECREES.

No. 127.

SIMPLE MONEY-DECREE.

(Title.)

Claim for
This cause coming on for final disposal before in the presence of , on the part of the plaintiff, and on the part of the defendant, it is ordered that the do pay to the the sum of Rs. interest thereon at the rate of per cent. per from the date of realization of the said sum, and do also pay to the the costs of this as taxed by the officer of the Court, with interest thereon at the rate aforesaid from the date of taxation to the date of realization.

Costs of Suit.

PLAINTIFF.

DEFENDANT.

Rs. A. P.

Rs. A.

1. Stamp for plaint ...
2. Do. for power ...
3. Do. exhibits ...
4. Pleader's fees on Rs. ...
5. Translation-fee ...
6. Subsistence for witness for attendance ...
7. Commissioner's fee ...
8. Service of process ...
9. &c. ...

- Stamp for power ...
- Do. petition ...
- Pleader's fee ...
- Subsistence for witnesses ...
- Service of process ...
- Translation-fee ...
- Commissioner's fee ...

TOTAL

TOTAL

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 128.

DECREE FOR SALE IN A SUIT BY A MORTGAGEE OR PERSON ENTITLED TO A LIEN.

(Title.)

It is ordered that it be referred to the Registrar [or Taxing Officer] to take an account of what is due to the plaintiff for principal and interest on the mortgage [or lien] mentioned in the plaint, and to tax the plaintiff's costs of this suit, and that the Registrar [or Taxing Officer] do declare in Court on the day of what he shall find to be due for principal and interest as aforesaid, and for costs; And upon the defendant paying into Court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs within six months from the date of declaring in Court the amount so due; it is ordered that the plaintiff do re-convey the said mortgaged premises free and clear from all incumbrances done by him, or any claiming by, from, or under, him, and do deliver

up to the defendant or to such person as he appoints all documents in his custody or power relating thereto, and that upon such re-conveyance being made, and documents being delivered up, the Registrar [or Taxing Officer] shall pay out to the plaintiff the said sum so paid in as aforesaid for principal, interest, and costs; but in default of the defendant, paying into Court such principal, interest, and costs as aforesaid by the time aforesaid, then it is ordered that the said mortgaged premises [or the premises subject to the said lien] be sold with the approbation of the Registrar [or Taxing Officer]. And it is ordered that the proceeds of such sale (after defraying thereout the expenses of the sale) be paid into Court, to the end that the same may be duly applied in payment of what shall be found due to the plaintiff for principal, interest, and costs as aforesaid, and that the balance (if any) shall be paid to the defendant or other person entitled to receive the same.

No. 129.

FINAL DECREE FOR FORECLOSURE.

(Title.)

WHEREAS it appears to the Court that the defendant has not paid into Court the sum _____, which was, on the _____ day of _____ last, declared in Court to be due to the plaintiff for principal and interest upon the mortgage in the plaint mentioned, and for costs, pursuant to the order made in this suit on the _____ day of _____ last, and that the period of six months has elapsed since the said day of _____

It is ordered that the defendant do stand absolutely debarred of all right to redeem the said mortgaged premises.

No. 130.

PRELIMINARY ORDER—ADMINISTRATION-SUIT.

Section 213 of the Code of Civil Procedure

(Title.)

It is ordered that the following accounts and inquiries be taken and made; that is to say:—

In creditor's suit—

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

In suits by legatees—

2. An account be taken of the legacies given by the testator's will.

In suits by next-of-kin—

An inquiry be made and account taken of what, of what share, if any, the plaintiff is entitled to as next-of-kin [or one of the next-of-kin] of the intestate.

[After the first paragraph the Order will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs-at-law, and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph, and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.]

3. An account of the funeral and testamentary expenses.

4. An account of the moveable property of the deceased came to the hands of the defendant, or to the hands of any other person, by his order or for his use.

5. An inquiry what part (if any) of the moveable property of the deceased is outstanding and undisposed of.

6. And it is further ordered that the defendant do, on or before the _____ day of _____ next, pay into Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or to his use.

7. And that if the Registrar shall find it necessary for carrying out the objects of the suit to sell any part of the moveable property of the deceased, that the same be sold accordingly, and the proceeds paid into Court.

8. And that Mr. E. P. be Receiver in the suit [or proceeding], and receive and get in all outstanding debts and outstanding moveable property of the deceased, and pay the same into the hands of the Registrar [and shall give security by bond for the due performance of his duties to the amount of _____ rupees].

9. And it is further ordered that if the moveable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say,

- (a) an inquiry what immoveable property the deceased was seized of or entitled to at the time of his death ;
- (b) an inquiry what are the incumbrances (if any) affecting the immoveable property of the deceased, or any part thereof ;
- (c) an account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.

10. And that the immoveable property of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale, and subject to the incumbrances of such of them as shall not consent.

11. And it is ordered that G. H. shall have the conduct of the sale of the immoveable property, and shall prepare the conditions and contracts of sale subject to the approval of the Registrar, and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

12. And it is further ordered that for the purpose of the inquiries hereinbefore directed, the Registrar shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the Registrar to give the most useful publicity to such inquiries.

13. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the day of , and that the Registrar do certify the result of the inquiries and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

14. And, lastly, it is ordered that this suit [or matter] stand adjourned for making final decree to the day

[Such part only of this order is to be used as is applicable to the particular case.]

No. 131.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE

Section 213 of the Code of Civil Procedure.

1. It is ordered that the defendant do, on or before the day of , pay into Court the sum of Rs. the balance by the said certificate found to be due from the said defendant on account of the estate of , the testator, and also the sum of Rs. for interest, at the rate of Rs. per centum per annum, from the day of to the day of , amounting together to the sum of Rs.

2. Let the Registrar [or Taxing Officer] of the said Court tax the costs of the plaintiff and defendant in the suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs. ordered to be paid into Court as aforesaid, as follows:—

(a)—The costs of the plaintiff to Mr. , his attorney [or pleader], and the costs of the defendant to Mr. , his attorney [or pleader].

(b)—And (if any debts are due) with the residue of the said sum of Rs. after payment of the plaintiff's and defendant's costs as aforesaid, let the sums found to be owing to the several creditors mentioned in the schedule to the Registrar's certificate, together with subsequent interest on such of the debts as bear interest, be paid ; and after making such payments, let the amount coming to the several legatees mentioned in the schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And if there should be any residue, let the same be paid to the residuary legatee.

THE FOURTH SCHEDULE.

DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES.

Section 213 of the Code of Civil Procedure.

1. Declare that the defendant is personally liable to pay the legacy of Rs. , bequeathed to the plaintiff ;
2. And it is ordered that an account be taken of what is due for principal and interest on the said legacy ;
3. And it is also ordered that the defendant do, within weeks after the date of the Registrar's certificate, pay to the plaintiff the amount of what the Registrar shall certify to be due for principal and interest ;
4. And it is ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN.

Sections 213 of the Code of Civil Procedure.

1. Let the Registrar of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the personal estate of *E. F.*, the intestate, within one week after the taxation of the said costs by the said Registrar, and let the defendant retain for her own use out of such sum her costs when taxed.
2. And it is ordered that the residue of the said sum of Rs. , after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows:—
 - (a)—Let the defendant, within one week after the taxation of the said costs by the Registrar as aforesaid, pay one-third share of the said residue to the plaintiffs, *A. B.*, and *C.*, his wife, in her right, as the sister and one of the next-of-kin of the said *E. F.*, the intestate.
 - (b)—Let the defendant retain for her own use one other third share of the said residue, as the mother, and one other of the next-of-kin of the said *E. F.*, the intestate.
 - (c)—And let the defendant, within one week after the taxation of the said costs by the Registrar as aforesaid, pay the remaining one-third share of the said residue to *G. H.*, as the brother and the other next-of-kin of the said *E. F.*, the intestate.

No. 132.

ORDER—DISSOLUTION OF PARTNERSHIP.

Section 215 of the Code of Civil Procedure.

(Title.)

It is declared that the partnership in the plaint mentioned between the plaintiff and defendant ought to stand dissolved as from the day of , and it is ordered that the dissolution thereof as from that day be advertised in the *Gazette*, &c.

And it is ordered that be the Receiver of the partnership-estate and effects in this suit, and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken:—

1. An account of the credits, property, and effects now belonging to the said partnership ;
2. An account of the debts and liabilities of the said partnership ;
3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the good-will of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the Registrar may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken and all the other acts required to be done be completed before the day of , and that the Registrar do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the day of

No. 133.

PARTNERSHIP—FINAL DECREE.

Section 215 of the Code of Civil Procedure.
IN THE COURT OF AT
Civil Suit, No.

A. B., of
against
C. D., of

It is ordered that the fund now in Court, amounting to the sum of Rs. , be applied as follows:—

1. In payment of the debts due by the partnership set forth in the Registrar's certificate, amounting in the whole to Rs.

2. In payment of the costs of all parties in this suit, amounting to Rs.

[These costs must be ascertained before the decree is drawn up.]

3. In payment of the sum of Rs. to the plaintiff as his share of the partnership-assets, of the sum of Rs. , being the residue of the said sum of Rs. now in Court, to the defendant as his share of the partnership-assets.

[Or, And that the remainder of the said sum of Rs. be paid to the said plaintiff [or defendant] in part-payment of the sum of Rs. certified to be due to him in respect of the partnership-accounts.]

And that the defendant [or plaintiff] do, on or before the day of , pay to the plaintiff [or defendant] the sum of Rs. , being the balance of the said sum of Rs. due to him, which will then remain due.

No. 134.

CERTIFICATE OF NON-SATISFACTION OF DECREE.

Section 224 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18

A. B., of
against
C. D., of

CERTIFIED that no [or partial, as the case may be, and, if partial, state to what extent] satisfaction of the decree of this Court, in Civil Suit No. of 18, a copy of which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

GIVEN under my hand and the seal of the Court, this day of 18

[L. S.]

Judge.

THE FOURTH SCHEDULE.

No. 13.

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE.

Section 248 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No. . of 18 .

Miscellaneous, No. of 18 .

A. B., of

against

C. D., of

To

WHEREAS has made application to this Court for execution of decree in Civil Suit No. 18, this is to give you notice that you are to appear before this Court on the day of 18, either in person, or by a pleader of this Court, or agent duly authorized and instructed, to show cause, if any, why execution should not be granted.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 136.

WARRANT OF ATTACHMENT OF MOVEABLE PROPERTY IN DEFENDANT'S POSSESSION IN EXECUTION OF A DECREE FOR MONEY.

Section 254 of the Code of Civil Procedure.

(Title.)

TO THE BAILIFF OF THE COURT.

WHEREAS was ordered by decree of this Court, passed on the day of 18, in Suit No. of 18, to pay to the plaintiff the sum of Rs. as noted in the margin; and whereas the said sum of Rs. has not been paid.

DECREE.			
Principal			
Interest			
Costs			
Costs of decree			
Interest thereon			
Total of attachment			
TOTAL			

THESE ARE TO COMMAND YOU to attach the moveable property of the said as set forth in the list hereunto annexed, or which shall be pointed out to you by the said, and unless, the said shall pay to you the said sum of Rs., together with Rs., the costs of this attachment, to hold the same until further orders from this Court.

YOU ARE FURTHER COMMANDED to return this warrant on or before the day of 18, with an endorsement certifying the date and manner in which it has been executed, or why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 18

Schedule.

[L. S.]

Judge.

No. 137.

WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, &c.

Section 263 of the Code of Civil Procedure.

(Title.)

TO THE BAILIFF OF THE COURT.

WHEREAS, in the occupancy of, has been decreed to the plaintiff in this suit: you are hereby directed to put the said in possession of the same, and you are hereby authorized to remove any person who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this day of

[L. S.]

Judge.

No. 138.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVEABLE PROPERTY, TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION THEREOF.

Section 268 of the Code of Civil Procedure.

(Title.)

To

WHEREAS has failed to satisfy a decree passed against on the day of 18, in favour of for Rs. : it is ordered that the defendant be, and is hereby, prohibited and restrained, until the further order of this Court, from receiving from the following property in the possession of the said, that is to say, to which the defendant is entitled, subject to any claim of the said, and the said is hereby prohibited and restrained, until the further order of this Court, from delivering the said property to any person or persons whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18

[L. S.]

Judge.

No. 139.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS NOT SECURED BY NEGOTIABLE INSTRUMENTS.

Section 268 of the Code of Civil Procedure.

(Title.)

To

WHEREAS has failed to satisfy a decree passed against on the day of 18, in Civil Suit, No. of 18, in favour of for Rs. : it is ordered that the defendant be, and hereby, prohibited and restrained, until the further order of this Court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely, and that you, the said be, and you are hereby, prohibited and restrained, until the further order of this Court, from making payment of the said debt, or any part thereof, to any person whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18

[L. S.]

Judge.

O. P. 80.

THE FOURTH SCHEDULE.

No. 140.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN A PUBLIC COMPANY, &C.

Section 268 of the Code of Civil Procedure.

(Title.)

To

Defendant, and to , Manager of Company?

WHEREAS has failed to satisfy a decree passed against on the day of 18, in Civil Suit, No. of 18, in favour of for Rs. : it is ordered that you, the defendant, be, and you are hereby, prohibited and restrained, until the further order of this Court, from making any transfer of shares in the aforesaid Company, namely , or from receiving payment of any dividends thereof; and you, the Manager of the said Company, are hereby prohibited and restrained from permitting any such transfer or making any such payment.

GIVEN under my hand and the seal of the Court, this day of 18.

[L. S.]

Judge.

No. 141.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVABLE PROPERTY.

Section 274 of the Code of Civil Procedure.

(Title.)

To

defendant.

WHEREAS you have failed to satisfy a decree passed against you on the day of 18, in Civil Suit, No. of 18, in favour of for Rs. : it is ordered that you, the said , be, and you are hereby, prohibited and restrained, until the further order of this Court, from alienating the property specified in the schedule hereunto annexed, by sale, gift, or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift, or otherwise.

GIVEN under my hand and the seal of the Court, this day of 18.

Schedule.

[L. S.]

Judge.

No. 142.

ATTACHMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY SECURITY IN THE HANDS OF A COURT OF JUSTICE OR OFFICER OF GOVERNMENT.

Sections 272 and 486 of the Code of Civil Procedure.

IN THE COURT OF

Civil Suit, No.

AT

of 18

A. B., of
against
C. D., of

To
SIR,

THE plaintiff having applied, under section of the Code of Civil Procedure, for an attachment of certain money now in your hands (here state how the

money is supposed to be in the hands of the person addressed, on what account, &c.), I request that you will hold the said money subject to the further order of this Court.

I have the honour to be,
SIR,
Your most obedient servant,

Dated the " day of 18

[L. S.]

Judge.

No. 143.

ORDER FOR PAYMENT TO THE PLAINTIFF, &c., OF MONEY, &c.,
IN THE HANDS OF A THIRD PARTY.

Section 277 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No. of 18

Miscellaneous, No. of 18

A. B., of

against

C. D., of

TO THE BAILIFF OF THE COURT AND TO

WHEREAS the following property has been attached in execution of a decree in Civil Suit, No. of 18, passed on the day of 18, in favour of for Rs. : it is ordered that the property so attached, consisting of Rs. in money, and Rs. in currency-notes, or a sufficient part thereof to satisfy the said decree, shall be paid over by you the said to, and that the said property, so far as may be necessary for the satisfaction of the said decree, shall be sold by you, the bailiff of the Court, by public auction, in the manner prescribed for sale in execution of decrees, and that the money which may be realized by such sale, or a sufficient part thereof, to satisfy the said decree, shall be paid over to the said, and the remainder, if any, shall be paid to you, the said

GIVEN under my hand and the seal of the Court, this day of 18

[I S.]

Judge.

No. 144.

NOTICE TO ATTACHING CREDITOR.

Section 278 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No. of 18

Miscellaneous, No. of 18

A. B., of

against

C. D., of

To WHEREAS has made application to this Court for the removal of attachment on placed at your instance in execution of the decree in Civil Suit, No. of 18, this is to give you notice to appear before this Court on the day of 18, either in person or by a pleader of the Court duly instructed, to support your claim as attaching creditor.

GIVEN under my hand and the seal of the Court, this day of 18

[L. S.]

Judge.

THE FOURTH SCHEDULE.

No. 145.

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR MONEY.

Section 287 of the Code of Civil Procedure

IN THE COURT OF AT
Civil Suit, No. of 18
Miscellaneous, No. of 18
A. B., of
against
C. D., of

TO THE BAILIFF OF THE COURT.

THESE ARE TO COMMAND YOU to sell by auction, after giving days' previous notice, by affixing the same in this Court-house, and after making due proclamation, the property attached under a warrant from this Court, dated the day of 18, in execution of a decree in favour of, in Suit No. of 18, or so much of the said property as shall realize the sum of Rs. , being the of the said decree and costs still remaining unsatisfied.

YOU ARE FURTHER COMMANDED to return this warrant on or before the day of 18, with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court this day of 18 .
[L. S.]
Judge.

No. 146.

NOTICE TO PERSON IN POSSESSION OF MOVABLE PROPERTY SOLD IN EXECUTION.

Section 300 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18
A. B., of
against
C. D., of

To
WHEREAS has been the purchaser at a sale by auction in execution of the decree in the above suit of, now in your possession, you are hereby prohibited from delivering possession of the said to any person except the said

GIVEN under my hand and the seal of the Court, this day of 18 .
[L. S.]
Judge.

No. 147.

PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN EXECUTION TO ANY OTHER THAN THE PURCHASER.

Section 301 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18
A. B., of
against
C. D., of

To and to
WHEREAS has become the purchaser at a public sale in execution of the decree in the above suit of certain debt due from you

* This proclamation shall specify the time, the place of sale, the property to be sold, the revenue assessed, should the property consist of land paying revenue to Government, and the amount for the recovery of which the sale is ordered, and as fairly and accurately as possible the other particulars required by section 287 to be specified.

to you , that is to say , it is ordered that you be, and you are hereby, prohibited from receiving, and you from making payment of, the debt to any persons except the said

GIVEN under my hand and the seal of the Court, this day of 18

[L. S.]

Judge.

No. 148.

PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD IN EXECUTION.

Section 301 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No.

of 18 .

A. B., of

against

C. D., of

To

and , Manager of Company.

WHEREAS has become the purchaser, at a public sale in execution of the decree, in the above suit of certain shares in the above Company, that is to say, of , standing in the name of you , it is ordered that you be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said , the purchaser aforesaid, or from receiving any dividends thereon; and you , Manager of the said Company, from permitting any such transfer of making any such payment to any person except the said , the purchaser aforesaid.

GIVEN under my hand and the seal of the Court, this day of 18

[L. S.]

Judge.

No. 149.

ORDER CONFIRMING SALE OF LAND, &C.

Section 312 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No.

of 18 .

A. B., of

against

C. D., of

WHEREAS the following land [or immoveable property] was, on the day of 18 , sold by the bailiff of this Court in execution of the decree in this suit; and whereas days have elapsed, and no application has been made [or objection allowed] to the said sale, it is ordered that the said sale be, and the said sale is hereby, confirmed.

GIVEN under my hand and the seal of the Court, this day of 18 .

Schedule.

[L. S.]

Judge.

THE FOURTH SCHEDULE.

No. 150.

CERTIFICATE OF SALE OF LAND.

Section 316 of the Code of Civil Procedure.

IN THE COURT OF

Civil Suit, No.

AT

of 18

A. B., of

against

C. D., of

THIS is to certify that has been declared the purchaser at a sale by public auction, on the day of 18 of , in execution of decree in this suit, and that the said sale has been duly confirmed by the Court.

GIVEN under my hand and the seal of the Court, this day of 18

[L. S.]

Judge.

No. 151.

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN EXECUTION.

Section 318 of the Code of Civil Procedure.

IN THE COURT OF

Civil Suit, No.

AT

of 18

A. B., of

against

C. D., of

TO THE BAILIFF OF THE COURT.

WHEREAS has become the certified purchaser of at a sale in execution of the decree in Civil Suit, No. of 18; and whereas such land is in the possession of , you are hereby ordered to put the said , the certified purchaser, as aforesaid, into possession of the said , and, if need be, to remove any person who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this day of 18

[L. S.]

Judge.

No. 152.

AUTHORITY TO THE COLLECTOR TO STAY PUBLIC SALE OF LAND.

Section 326 of the Code of Civil Procedure.

IN THE COURT OF

Civil Suit, No.

AT

of 18

A. B., of

against

C. D., of

To

SIR,

Collector of

IN answer to your communication, No. , dated , representing that the sale in execution of the decree in this suit of , and lying within your district, paying revenue to Government, is objectionable, I have the honour to inform you

THE FOURTH SCHEDULE.

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that you are authorized to make provision for the satisfaction of the said decree in the manner recommended by you instead of proceeding to a public sale of

I have the honour to be,

Sir,

Your obedient servant,

[L. S.]

Judge.

No. 153.

ORDER FOR COMMITTAL FOR RESISTING, &c., EXECUTION OF DECREE FOR LAND.

Section 329 of the Code of Civil Procedure.

(Title)

To

WHEREAS it appears to the Court that has, without just cause, resisted [or obstructed] the execution of the decree of the Court, passed against on the day of 18, in Civil Suit, No. of 18, whereby certain land or immoveable property was adjudged to, it is ordered that the said be committed to custody for a period of days.

GIVEN under my hand and the seal of the Court, this day of 18.

[L. S.]

Judge.

No. 154.

WARRANT OF ARREST IN EXECUTION.

Section 337 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18.

Miscellaneous, No. of 18.

A. B., of

against

C. D., of

TO THE BAILIFF OF THE COURT.

WHEREAS was adjudged by a decree of the Court, in No. of 18,

Principal	.	.	.	.
Interest	.	.	.	.
Costs	.	.	.	.
Execution	.	.	.	.
TOTAL	.	.	.	.

dated. 18, to pay to the plaintiff the sum of Rs. as noted in the margin, and whereas the said sum of Rs. has not been paid to the said plaintiff in satisfaction of the said decree, these are to command you to arrest the said defendant, and, unless the said defendant shall pay to you the said sum of Rs. together with Rs. for the costs of executing this process, to bring the said defendant before the Court with all convenient speed.

You are further commanded to return this warrant on or before the day of 18, with an endorsement certifying the day and manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 18

[L. S.]

Judge.

THE FOURTH SCHEDULE.

No. 155.

NOTICE OF PAYMENT INTO COURT.

Section 377 of the Code of Civil Procedure.

IN THE COURT OF 18

B. No.

A. B. v. C. D.

TAKE notice that the defendant has paid into Court Rs. , and says that that sum is enough to satisfy the plaintiff's claim [or the plaintiff's claim for, &c.].

To Mr. X. Z.,
the Plaintiff's Pleader;

U. Z.,
Defendant's Pleader.

No. 156.

COMMISSION TO EXAMINE ABSENT WITNESSES.

Section 386 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18

A. B., of

against

C. D., of

To

WHEREAS the evidence of is required by the in the above suit; and whereas you are requested to take the examination on interrogatories [or vivâ voce] of such witnesses, and you are hereby appointed a Commissioner for that purpose, and you are further requested to make return of such examination so soon as it may be taken [process to require the attendance of the witness will be issued by this Court on your application].*

GIVEN under my hand and the seal of the Court, this day of 18

[L. S.]
Judge.

No. 157.

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS.

Sections 392 and 394 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18

A. B., of

against

C. D. of

To

WHEREAS it is deemed requisite, for the purposes of this suit, that a commission should be issued, you are hereby appointed Commissioner for the purpose of [process to compel the attendance before you of any witnesses, or for the production of any documents which you may desire to examine or inspect, will be issued by this Court on your application].*

A sum of Rs. , being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 18

[L. S.]
Judge.

* Not necessary where the commission goes to another Court.

No. 158.

WARRANT OF ARREST BEFORE JUDGMENT.

Section 478 of the Code of Civil Procedure.

IN THE COURT OF
Civil Suit, No. of 18
A. B., of
against
C. D., of

TO THE BAILIFF OF THE COURT

WHEREAS, the plaintiff in the above suit, has proved, to the satisfaction of the Court, that there is probable cause for believing that the defendant is about to abscond, these are to command you to take the said defendant into custody, and to bring him before the Court, in order that he may show cause why he should not furnish security to the amount of rupees for personal appearance before the Court, until such time as the said suit shall be fully and finally disposed of, and until execution or satisfaction of any decree that may be passed against him in the suit.

GIVEN under my hand and the seal of the Court, this day of 18

[L. S.]

Judge.

No. 159.

ORDER FOR COMMITTAL.

Section 481 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18
A. B., of
against
C. D., of

To

WHEREAS, plaintiff in this suit, has made application to the Court that security be taken for the appearance of the defendant to answer any judgment that may be passed against him in the suit; and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which he has failed to do; it is ordered that the said defendant be committed to custody until the decision of the suit, or, if judgment be given against him, until the execution of the decree.

GIVEN under my hand and the seal of the Court, this day of 18

[L. S.]

Judge.

No. 160.

ATTACHMENT BEFORE JUDGMENT WITH ORDER TO CALL FOR SECURITY FOR FULFILLMENT OF DECREE.

Section 484 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18
A. B., of
against
C. D., of

TO THE BAILIFF OF THE COURT.

WHEREAS, the plaintiff in the above suit, has proved, to the satisfaction of the Court, that the defendant, these are to command you to call upon the said defendant

ant , or or before the day of , either to furnish security for the sum of rupees to produce and place at the disposal of this Court, when required , or the value thereof, or such portion of the value as may be sufficient to fulfil any decree that may be passed against , or to appear and show cause why should not furnish security; and you are further ordered to attach the said , and keep the same under safe and secure custody until the further order of the Court, and in what manner you shall have executed this warrant make appear to the Court immediately after the execution hereof, and have you there then this warrant.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]
Judge.

No. 161.

ATTACHMENT BEFORE JUDGMENT ON PROOF OF FAILURE TO FURNISH SECURITY.

Section 485 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18 .
A. B., of
against
C. D., of

TO THE BAILIFF OF THE COURT.

WHEREAS , the plaintiff in this suit, has applied to the Court to call upon , the defendant, to furnish security to fulfil any decree that may be passed against in the suit, and whereas the Court has called upon the said to furnish such security, which has failed to do ; these are to command you to attach , the property of the said , and keep the same under safe and secure custody until the further order of Court, and in what manner you shall have executed this warrant make appear to this Court immediately after the execution hereof, and have you there then this warrant.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]
Judge.

No. 162.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVEABLE PROPERTY, TO WHICH THE DEFENDANT IS ENTITLED, SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSONS TO THE IMMEDIATE POSSESSION THEREOF.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18 .
A. B., of
against
C. D., of

To

It is ordered that you, the said , be, and you are hereby, prohibited and restrained, until the further order of this Court, from receiving from the following property in the possession of the said , that is to say, Defendant.

THE FOURTH SCHEDULE.

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to which the defendant is entitled, subject to any claim of the said and the said, is hereby prohibited and restrained, until the further order of this Court, from delivering the said property to any persons whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18

[L. S.]

Judge.

No. 163.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVABLE PROPERTY.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No. of 18

A. B., of

against

C. D., of

To

Defendant.

It is ordered that you, the said, be, and you are hereby, prohibited and restrained, until the further order of this Court, from alienating the property specified in the schedule hereunto annexed, by sale, gift, or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift, or otherwise.

GIVEN under my hand and the seal of the Court, this day of 18

Schedule.

[L. S.]

Judge.

No. 164.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY IN THE HANDS OF OTHER PERSONS, OR OF DEBTS NOT BEING NEGOTIABLE INSTRUMENTS.

Section 486 of the Code of Civil Procedure.

IN THE COURT.

AT

Civil Suit, No. of 18

A. B., of

against

C. D., of

To

It is ordered that the defendant be, and he is hereby, prohibited and restrained, until the further order of this Court, from receiving from the [money now in hands belonging to the said defendant, or debts, as the case may be, describing them], and that the said be, and hereby prohibited and restrained, until the further order of this Court, from making payment of the said [money, &c.], or any part thereof, to any person whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18

[L. S.]

Judge.

THE FOURTH SCHEDULE.

No. 165.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN A PUBLIC
COMPANY, &c.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF

Civil Suit, No.

of 18

AT

A. B., of

against

C. D., of

To

Defendant, and to

Manager of

Company.

It is ordered that the defendant, be, and , are hereby prohibited and restrained, until the further order of the Court, from making any transfer of shares, being in the aforesaid Company, or from receiving payment of any dividends thereof, and you Manager of the said Company, are hereby prohibited and restrained from permitting any such transfer, or making any such payment.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 166.

TEMPORARY INJUNCTIONS.

Section 492 of the Code of Civil Procedure.

UPON motion made unto this Court by , pleader of [or Counsel for] the plaintiff, A. B., and upon reading the petition of the said plaintiff in this matter, filed [this day] [or the plaintiff filed in this case on the day of , or the written statement of the said plaintiff, filed on the day of], and upon hearing the evidence of and in support thereof [if after notice and defendant not appearing : add, and also the evidence of as to service of notice of this motion upon the defendant, C. D.]: This Court doth order that an injunction be awarded to restrain the defendant, C. D., his servants, workmen, and agents, from pulling down, or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned [or in the written statement, or petition, of the plaintiff and evidence at the hearing of this motion mentioned], being No. 9, Oil-mongers' Street, Hindupur, in the taluq of , and from selling the materials whereof the said house is composed, until the hearing of this cause, or until the further order of this Court.

Dated this day of 18 .

Civil Judge.

[Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus :—] to restrain the defendants and from parting with, out of the custody of them or any of them, or endorsing, assigning, or negotiating, the promissory note [or bill of exchange] in question, dated on or about the , &c., mentioned in the plaintiff's plaint [or petition] and the evidence heard at this motion, until the hearing of this cause, or until the further order of this Court.

[In copyright cases] to restrain the defendant, C. D., his servants, agents, or workmen, from printing, publishing, or vending a book, called , or any part thereof, until the, &c.

[Where part only of a book is to be restrained] to restrain the defendant, C. D., his servants, agents, or workmen, from printing, publishing, selling, or otherwise disposing of such parts of the book in the plaint [or petition and evidence, &c.] mentioned to have been published by the defendant as hereinafter specified, namely,

that part of the said book which is entitled , and also that part which is entitled [or which is contained in page to page both inclusive], until the , &c.

[In ~~Patent~~ cases] to restrain the defendant, C. D., his agents, servants, and workmen, from making or vending any perforated bricks [or as the case may be] upon the principle of the inventions in the plaintiff's plaint [or petition, &c., or written statement, &c.,] mentioned, belonging to the plaintiffs, or either of them, during the remainder of the respective terms of the patents in the plaintiff's plaint [or as the case may be] mentioned, and from counterfeiting, imitating, or resembling the same inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, &c.

[In case] of trade-marks] to restrain the defendant, C. D., his servants, agents, or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking [or as the case may be] described as or purporting to be blacking manufactured by the plaintiff, A. B., in bottles having affixed thereto such labels as in the plaintiff's plaint [or petition, &c.,] mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff, A. B., and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff, A. B., until the, &c.

[To restrain a Partner from, in any way, interfering in the business] to restrain the defendant, C. D., his agents and servants, from entering into any contract, and from accepting, drawing, endorsing, or negotiating any bill of exchange, note, or written security, in the name of the partnership-firm of B. & D., and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement, or undertaking, and from doing, or causing to be done, any act, in the name or on the credit of the said partnership-firm of B. & D., or whereby the said partnership-firm can or may in the manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, or promise, or undertaking, until the, &c.

No. 167.

NOTICE OF APPLICATION FOR INJUNCTION.

Section 494 of the Code of Civil Procedure.

IN THE COURT OF

AT

A. B., of

against

C. D., of

TAKE notice that I, A. B., intend to apply, at the sitting of the Court at aforesaid, on the day of , for an injunction to restrain C. D. from further prosecuting a suit which he has commenced against me in , to recover damages for the breach of the contract for the specific performance of which this suit was commenced [or to restrain him from receiving and giving discharges for any of the debts due to the partnership in the matter of the partnership between us for the winding-up of which the suit was commenced, or from digging the turf from the land which was agreed to be sold by him to me by the agreement, the specific performance of which this suit is commenced to enforce, or as the case may be].

Dated this day of 18

To C. D.

A. B.

[N.B.—Where the injunction is to be applied for against a party whose name and address do not appear upon any proceeding already filed in the suit, such name and address must be stated in full to enable the proper officer to serve the notice.]

THE FOURTH SCHEDULE.

No. 168.

APPOINTMENT OF A RECEIVER.

Section 503 of the Code of Civil Procedure.

IN THE COURT OF

Civil Suit, No. of 18

A. B., of
against
C. D., of

To

WHEREAS, has been attached in execution of a decree passed in the above suit on the day of 18, in favour of : you are hereby [subject to your giving security to the satisfaction of the Registrar] appointed Receiver of the said property under section 503 of the Code of Civil Procedure, with full powers under the provisions of that section.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property. You will be entitled to remuneration at the rate of per cent. upon your receipts under the authority of this appointment.

GIVEN under my hand and the seal of the Court, this day of 18

[L. S.]

Judge.

No. 169.

BOND TO BE GIVEN BY RECEIVER.

Section 503 of the Code of Civil Procedure.

IN THE COURT OF

Civil Suit, No. of 18

A. B., of
against
C. D., of

Know all men by these presents, that we, I. J., of, &c., and K. L., of, &c., and M. N., of &c., are jointly and severally bound to G. H., Registrar of the Court of , in Rs. , to be paid to the said G. H., or his attorney, executors, administrators, or assigns. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors, and administrators jointly and severally by these presents.

Dated this day of 18

And whereas a plaint has been filed in this Court by A. B. against C. D. for the purpose of [here insert object of suit];

And whereas the said I. J. has been appointed, by order of the above-mentioned Court, to receive the rents and profits of the immoveable property, and to get in the outstanding moveable property of O. P., the testator in the said plaint named.

Now, the condition of this obligation is such, that if the above-bounden I. J. shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immoveable property, and in respect of the moveable property of the said O. P. [or as the case may be] at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct; then this obligation shall be void, otherwise it shall remain in full force.

I. J.
K. L.
M. N.

Signed and delivered by the above-bounden in the presence of

NOTE.—If deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond.

No. 170.

ORDER OF REFERENCE TO ARBITRATION UNDER AGREEMENT OF PARTIES.

Section 508 of the Code of Civil Procedure.

(Title.)

To

WHEREAS the above-mentioned plaintiff and defendant have agreed to refer the matters in difference between them in the above suit to your arbitration and award, you are hereby appointed accordingly to determine all the said matters in difference between the parties, and with power, by consent of the parties, to determine which party shall pay the costs of this reference.

You are required to deliver your award in writing to this Court on or before the day of 18, or such other day as this Court may further fix.

Process to compel the attendance before you of any witnesses, or for the production of any documents which you may desire to examine or inspect, will be issued by this Court on your application, and you are empowered to administer to such witnesses oath or affirmation.

A sum of Rs. , being your fee in the above suit, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 18

[L. S.]

Judge.

No. 171.

ORDER OF REFERENCE TO ARBITRATION BY COURT, WITH CONSENT.

Section 508 of the Code of Civil Procedure.

(Title.)

UPON reading a petition of the plaintiff, filed this day, and on the consent of for the defendant, and upon hearing for the plaintiff, and for the defendant, it is ordered, by and with the consent of all the parties, that all matters in difference in this suit, including all dealings and transactions between all parties, be referred to the final determination of , who is to make his award in writing, and submit the same to this Court, together with all proceedings, depositions, and exhibits in this suit, within one month from the date hereof. And it is ordered further, by and with the like consent, that the said arbitrator is to be at liberty to examine the parties and their witnesses upon oath or affirmation, which he is empowered to administer, and that the said arbitrators shall have all such powers or authorities as are vested in arbitrators under the Code of Civil Procedure, including therein power to call for all books of accounts that he may consider necessary. And it is further ordered, by and with the like consent, that the costs of this suit, together with the costs of reference to arbitration, up to and including the award of the said arbitrator, and the enforcement thereof, do abide the result of the finding of the said arbitrator. And it is further ordered, by and with the like consent, that the said arbitrator be at liberty to appoint a competent accountant to assist him in the investigation of the several matters referred to him as aforesaid, and that the remuneration of such accountant and other charges attending thereto be in the discretion of the said arbitrator.

GIVEN under my hand and the seal of the Court, this day of 18

[L. S.]

Judge.

THE FOURTH SCHEDULE.

No. 172.

SUMMONS IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT.

Section 532 of the Code of Civil Procedure.

No. OF SUIT.

IN THE COURT OF AT

Plaintiff.

Defendant.

To [Here enter the defendant's name, description, and address.]

WHEREAS [here enter the plaintiff's name, description, and address] has instituted a suit in this Court against you under Chapter XXXIX. of the Code of Civil Procedure for Rs. _____ principal and interest [or Rs. _____ balance of principal and interest], due to him as the payee [or indorsee] of a bill of exchange [or hundi, or promissory note], of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from the service hereof, inclusive of the day of such service, to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding the sum of Rs. [here state the sum claimed] and the sum of Rs. _____ for costs.

Leave to appear may be obtained on an application to the Court, supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

[Here copy the bill of exchange, hundi, or promissory note, and all endorsements upon it.]

No. 173.

MEMORANDUM OF APPEAL.

Section 541 of the Code of Civil Procedure.

MEMORANDUM OF APPEAL.

(Name, &c., as in Register.) Plaintiff—Appellant.

(Name, &c., as in Register.) Defendant—Respondent.

[Name of Appellant] plaintiff [or defendant] above-named appeals to the High Court at [or District Court at _____, as the case may be] against the decree of _____ in the above suit, dated the _____ day of _____, for the following reasons, namely [here state the grounds of objection].

THE FOURTH SCHEDULE.

No. 175.

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING OF THE APPEAL.

Section 553 of the Code of Civil Procedure.

IN THE COURT OF

AT

, Appellant, v.

, Respondent.

APPEAL from the of the Court of , dated the day of
18 .

To

Respondent.

TAKE notice that an appeal from the decree of in this case has been
presented by and registered in this Court, and that the day of
18 has been fixed by this Court for the hearing of this appeal.

If no appearance is made on your behalf by yourself, your partner, or by some
one by law authorized to act for you in this appeal, it will be heard and decided
ex parte in your absence.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

[NOTE.—If a stay of execution has been ordered, intimation should be given of the fact on
this notice.]

No. 176.

DECREE ON APPEAL.

Section 579 of the Code of Civil Procedure.

IN THE COURT OF

AT

, Appellant, v.

, Respondent.

APPEAL from the of the Court of , dated the day of
18 .

Memorandum of Appeal.

, Plaintiff.

, Defendant.

Plaintiff [or defendant] above-named appeals to the Court at
against the decree of in the above suit, dated the day of 18 ,
for the following reasons, namely :

[here state the reasons]

This appeal coming on for hearing on the day of 18 , before
, in the presence of for the appellant, and of for the respondent,
it is ordered.—

[here state the relief granted]

The costs of this appeal, amounting to , are to be paid by
The costs of the original suit are to be paid by .

GIVEN under my hand this day of 18 .

[L. S.]

Judge.

Section 587 of the Code of Civil Procedure.

REGISTER OF APPEALS FROM APPELLATE DECREES.

[illegible]

THE FOURTH SCHEDULE.

No. 178.

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE GRANTED.

Section 626 of the Code of Civil Procedure.

IN THE COURT OF

AT

, Plaintiff, v.

, Defendant.

To

TAKE notice that has applied to this Court for a review of its judgment passed on the day of 18 in the above case. The day of 18 is fixed for you to show cause why the Court should not grant a review of its judgment in this case.

GIVEN under my hand and the seal of the Court, this day of 18 .

[L. S.]

Judge.

No. 179.

NOTICE OF CHANGE OF PLEADER.

IN THE COURT OF

AT

A. B., of

against

C. D., of

TO THE REGISTRAR OF THE COURT.

TAKE notice that I, A. B. [or C. D.], have hitherto employed as my pleader G. H., of , in the above-mentioned cause, but that I have ceased to employ him, and that my present pleader is J. K., of

A. B. [or C. D.]

No. 180.

MEMORANDUM TO BE PLACED AT FOOT OF EVERY SUMMONS, NOTICE, DECREE, OR ORDER OF COURT, OR ANY OTHER PROCESS OF THE COURT.

Hours of attendance at the office of the Registrar [place of office] from ten till four, except on [here insert the day on which the office will be closed], when the office will be closed at one.

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